Gabriel A. Valle
800 Mott Hill Road
South Glastonbury, CT 06073

The Honorable Judge Juan R. Sánchez
14613 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

Dear Judge Sánchez,

I am a recent graduate of the Georgetown University Law Center and supervising editor on the *Georgetown Immigration Law Journal*. I am writing to apply for a 2024 clerkship in your chambers. While in high school I did a summer program at the University of Pennsylvania and had a wonderful experience in Philadelphia. I would love the opportunity to return and work to serve such a wonderful city.

My parents came to the United States from Latin America, and I am the first in my immediate family to pursue a law degree. What drew me to law school was the unique ability of lawyers to take printed words in a statute or amendment and through their writing and oral advocacy skills animate the values encapsulated on the page for their clients. While participating in Georgetown's Civil Litigation Clinic, I got a taste of this ability while representing a minor in the District of Columbia's foster youth system in a wrongful arrest suit against the District. The experience cemented my desire to litigate. Eventually I hope to work as a government attorney and pursue a career in public service.

Included with this letter are my resume, law school transcript, and writing sample. Two letters of recommendation are attached and are from the following professors:

1. Professor Anita Krishnakumar, Anne Fleming Research Professor at Georgetown University Law Center
    - She can be reached at anita.krishnakumar@georgetown.edu.
2. Professor Brad Snyder, Anne Fleming Research Professor at Georgetown University Law Center
    - He can be reached at brad.snyder@georgetown.edu.

Thank you very much for your time and consideration. Should you have any more questions, I am more than happy to answer! My email address is gav21@georgetown.edu and my cell phone number is (617) 901-1507.

All the Best,
Gabriel Valle

Gabriel A. Valle

Gav21@georgetown.edu | 617-901-1507
800 Mott Hill Road
South Glastonbury, CT 06073

EDUCATION

GEORGETOWN UNIVERSITY LAW CENTER *Washington, D.C.*
Juris Doctor May 2023
GPA - 3.77
Publications: *A Hero Forgotten: Gus Garcia and the Litigation of Hernandez v. Texas*, selected for publication in the *Journal of Supreme Court History*, Spring 2023.
Activities: Research Assistant for Professor Kevin Tobia; Georgetown Civil Litigation Clinic, Spring 2023; Supervising Editor, Georgetown Immigration Law Journal.

UNIVERSITY OF CONNECTICUT SCHOOL OF LAW *Hartford, CT*
First-Year J.D. Coursework Completed August 2020 - May 2021
Activities: Quarterfinalist in Loiselle Moot Court Competition; Connecticut Moot Court Executive Board Member; Latino Law Student Association Member.

BOSTON COLLEGE, MORRISSEY COLLEGE OF ARTS AND SCIENCES *Chestnut Hill, MA*
Bachelor of Arts in History & Music May 2020
Honors: Father Frank T. Kennedy Award for Academic Excellence in Music recipient (2020); Dean's List High Honors; Dean's List Honors.
Activities: Published in Bellarmine Law Society Journal (2018); Co-President of BC Symphony Orchestra E-Board (2017-20); Boston College Music Department Senior Seminar Colloquium; Boston College Cadigan Alumni Center Caller.
Thesis: *The Brutality of Southern Justice: The Origination, Institutionalization, and Transformation of Lynching in the American South*.

CHOATE ROSEMARY HALL *Wallingford, CT*
Honors: Hicks Lawrence Prize in Music (2016); Dean's List 2013-2016. May 2016
Activities: Varsity Mens Swimming (2014-16); Arts Concentration Program (2013-16).

EXPERIENCE

Georgetown University Law Center; Washington, D.C. January 2023 - Present
Civil Litigation Clinic
- Drafted the Convention Against Torture section of a forty-five-page brief to be filed before the Board of Immigration Appeals concerning a motion to reopen a Convention Against Torture Claim based on ineffective assistance of counsel on remand from the Second Circuit.
- Prepared a four-page memorandum on probable cause in the District of Columbia when the officers in question suspected trespass. Specifically, the memorandum compared and distinguished the facts of the clinic's case from *District of Columbia v. Wesby*, 138 S. Ct. 577 (2018).

Georgetown University Law Center; Washington, D.C. January 2023 – Present
Research Assistant to Professor Tobia
- Surveyed over three hundred both electronic and physical sources, comparing contemporary interpretations of each section of the Constitution with their original public meaning.
- Compiled an excel spreadsheet of over sixty academic articles demonstrating how contemporary interpretation of a specific clause or amendment of the Constitution is not in line with its original meaning.

Kirkland & Ellis; New York, New York May – July 2022
Summer Associate (Accepted offer to return as a full-time associate).
- Completed a docket review of over 900 motions filed in support of Nordic Aviation Capital's Chapter 11 Bankruptcy in the Eastern District of Virginia, including a spreadsheet of all motions filed by Kirkland & Ellis to ensure correct billing.
- Researched congressional testimony on the legality of divisive mergers in connection with solvent companies filing for bankruptcy when facing wide-spread toxic tort liability.

SKILLS AND INTERESTS

- Proficient in Spanish, French, and elementary Latin.
- Violin, History (American, Music, and European), Classical Music, 60s/70s Music, Cooking, Travel, Swimming, Tennis.

Record of: Gabriel Alexandre Valle
GUID: 807324186

Course Level: Juris Doctor

Transfer Credit:
University of Connecticut
School Total: 31.00

Entering Program:
Georgetown University Law Center
Juris Doctor
Major: Law

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2021							
LAWJ	1264	05	Professional Responsibility: Ethics in Public Interest Practice	3.00	B	9.00	
			Michael Kirkpatrick				
LAWJ	1647	05	Warren Court Legal History Seminar	3.00	A	12.00	
			Brad Snyder				
LAWJ	195	05	Election Law: Voting, Campaigning and the Law	3.00	A	12.00	
			Paul Smith				
LAWJ	545	08	Financial Restructuring and Bankruptcy	4.00	A-	14.68	
			Adam Levitin				

	EHrs	QHrs	QPts	GPA
Current	13.00	13.00	47.68	3.67
Cumulative	44.00	13.00	47.68	3.67

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2022							
LAWJ	025	05	Administrative Law	3.00	A	12.00	
			Anita Krishnakumar				
LAWJ	121	09	Corporations	4.00	A-	14.68	
			Michael Diamond				
LAWJ	1316	05	Bankruptcy Advocacy	4.00	A	16.00	
			David Kuney				
LAWJ	1778	08	Judicial Selection Process and Reforming the Supreme Court Seminar	2.00	A-	7.34	
			Nan Aron				
LAWJ	264	05	Labor Law: Union Organizing, Collective Bargaining, and Unfair Labor Practices	3.00	A-	11.01	
			Jonathan Fritts				

	EHrs	QHrs	QPts	GPA
Current	16.00	16.00	61.03	3.81
Annual	29.00	29.00	108.71	3.75
Cumulative	60.00	29.00	108.71	3.75

----------Continued on Next Column----------

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2022							
LAWJ	165	02	Evidence	4.00	A-	14.68	
			Michael Pardo				
LAWJ	1782	08	Statutory Interpretation Theory Seminar	2.00	A	8.00	
			Anita Krishnakumar				
LAWJ	1790	08	Shareholder Power, Voting, and the Governance of Firms Seminar	2.00	A-	7.34	
			Jonathon Zytnick				
LAWJ	263	09	Employment Law	3.00	A-	11.01	
			Brishen Rogers				
LAWJ	430	05	Recent Books on the Constitution Seminar	2.00	A	8.00	
			Randy Barnett				

	EHrs	QHrs	QPts	GPA
Current	13.00	13.00	49.03	3.77
Cumulative	73.00	42.00	157.74	3.76

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2023							
LAWJ	052	05	Fourteenth Amendment Seminar	3.00	A	12.00	
LAWJ	1494	05	Civil Litigation Clinic	6.00	A	24.00	
LAWJ	178	05	Federal Courts and the Federal System	3.00	B+	9.99	

Transcript Totals

	EHrs	QHrs	QPts	GPA
Current	12.00	12.00	45.99	3.83
Annual	25.00	25.00	95.02	3.80
Cumulative	85.00	54.00	203.73	3.77

End of Juris Doctor Record

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

June 04, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

It gives me great pleasure to recommend Gabriel Valle, who has applied to serve as a law clerk in your chambers. Gabe is incredibly smart, inquisitive, and thoughtful—a stellar student and a lovely human being. I believe he would make an excellent law clerk and would bring a wonderful perspective to your chambers.

I got to know Gabe over the 2021-2023 academic years, when he was a student in my Administrative Law class and later in my Statutory Interpretation seminar. The seminar had only 22 students and involved a lot of in-class discussion as well as written student critiques of papers, books, and articles, so I got to know the students quite well. During that class, I spoke regularly with Gabe in class and in office hours. Gabe's comments about the class readings were always top-notch—both highly thoughtful and well-written. He displayed an excellent grasp of the material and an ability to engage in nuanced thinking about both the authors' topics and his classmates' reactions to them. Gabe's comments also stood out because of his kindness and grace when he disagreed with an author or classmate. It was an absolute pleasure to have Gabe in class—he was one of those rare students I knew I could count on to answer difficult questions and take our class discussions to the next level.

Beyond his excellence in the classroom, Gabe is a wonderful human being and a delight to interact with. The child of immigrants, Gabe has worked hard his entire life and demonstrates genuine dedication and sincerity in his dealings with teachers and classmates. Both in college and in law school, Gabe has shown an admirable ability to balance rigorous academics with outside interests and service to others. In addition to maintaining top grades in law school, Gabe is, for example, also an accomplished violinist, who has played for 18 years. In college, he was a double major—in both history and music—and served as Co-President of the Boston College Symphony Orchestra E-Board. In law school, he has managed to earn excellent grades while serving as a Supervising Editor for the Georgetown Immigration Law Journal, a research assistant for Professor Kevin Tobia, and providing legal services through the Georgetown Civil Litigation Clinic. Finally, Gabe's longstanding love of history is palpable in a paper he wrote for a legal history seminar taught by one of my colleagues—it is an engaging, excellent piece of scholarship that has been chosen for publication in the Journal of Supreme Court History. In addition, he is just a pleasure to converse with—respectful, mature, incredibly curious, and deeply thoughtful.

In short, Gabe would make a terrific law clerk—he is sharp, diligent, reliable, and a joy to work with. If you give him the opportunity, I have no doubt that he will be one of your hardest workers, as well as a thoughtful and respected colleague. He is an excellent student and human being, and I expect that he will have a very successful legal career. I hope that he gets the chance to begin it by working for you.

Thank you for considering this recommendation, and please let me know if I can provide any additional information about Gabe that would assist you.

Sincerely,

Anita S. Krishnakumar
Anne Fleming Research Professor
Georgetown University Law Center
anita.krishnakumar@georgetown.edu
(917) 592-4561

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

June 04, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I highly recommend Gabriel Valle for a judicial clerkship. During the spring of 2021, Gabe was in my 12-person Warren Court seminar. Students used the justices' papers at the Library of Congress to write original research papers about the Warren Court's justices and underexplored cases. Usually, my students choose from a list of suggested topics based on my knowledge of the field and underexplored areas of law. Gabe, however, proposed his own topic – Mexican-American attorney Gus Garcia's successful challenge of the exclusion of Mexican Americans from Texas juries resulting in the 1954 Supreme Court decision in *Hernandez v. Texas*. I immediately agreed.

Gabe told Garcia's fascinating bottom-up story by using Garcia's papers at the University of Texas and Texas newspapers that have been digitized and are on microfilm. He also dug deep into the justices' papers at the Library of Congress and discovered an important certiorari memorandum by Warren's senior law clerk James C.N. Paul suggesting that the Court ask for a reply from the state. He also found memoranda on the case from Warren's law clerk Richard Flynn and Justice Douglas's law clerk James F. Crafts. As a result of these memoranda, the Court granted certiorari and, after briefing and argument from Garcia and co-counsel, found Texas in violation of the Fourteenth Amendment. Gabe takes the reader behind the scenes as the new chief justice accepts advice from Justice Frankfurter about how to write the opinion so as not to create more backlash in the wake of *Brown v. Board of Education* – which was decided two weeks before Hernandez. Finally, Gabe revealed that after his momentous victory, Garcia battled alcoholism and died penniless ten years later.

Gabe's paper, "A Hero Forgotten: Gus Garcia and the Litigation of Hernandez v. Texas," makes a major historical contribution in recovering the story of Gus Garcia and why *Hernandez v. Texas* did not ignite a movement for Mexican-American rights the way that *Brown v. Board of Education* did for the rights of African Americans. In June 2023, the article was published in Volume 48, Number 1 of the Journal of Supreme Court History. I am not surprised. It is well-researched, well-written, and a first-rate work of legal scholarship.

Gabe is a terrific candidate for a judicial clerkship. After transferring from the University of Connecticut Law School, he hit the ground running at Georgetown and received an A in Paul Smith's Election Law class. He is a supervisory editor of the *Georgetown Immigration Law Journal*. He has worked at three different law firms – most recently at Kirkland & Ellis's New York office during the summer of 2022.

On a personal level, Gabe is first rate. I greatly enjoyed our conversations in my office about constitutional law and about his paper. He was very open to my research and editorial suggestions and made the paper substantially better through multiple revisions. He is a hard worker, a listener, intellectually curious, and a people person. He does not have a sense of entitlement of many elite law students and offers his opinions in class with intelligence and grace. He will get along extremely well with his co-clerks and the judge.

Even though he went a straight from college to law school, Gabe has a tremendous amount of maturity and poise. In a few years' time, he will be the whole package. You will not regret hiring him. Please interview Gabe Valle for a clerkship.

Sincerely,

Brad Snyder
Professor of Law

Brad Snyder - brad.snyder@law.georgetown.edu

Background: This is an argument section from a brief before the Board of Immigration Appeals (the Board) on remand from the Second Circuit. The Second Circuit consolidated our client's direct appeal and motion to reopen concerning his claim for Convention Against Torture (CAT) protection, which was stymied in part by ineffective assistance of counsel. This section argues that Mr. X possess a strong CAT claim that the Board on remand should grant outright. Given the sensitive nature of the case, all relevant names are redacted. The Georgetown Civil Litigation Clinic's client is Mr. X, the country of deportation is 'Foreign Country,' and the name of the gang involved is 'Gang B.'

1. MR. X HAS A VIABLE CAT CLAIM BECAUSE HE CAN DEMONSTRATE LIKELIHOOD AND ACQUISCENCE.

Mr. X possesses a strong CAT claim because he faces a high likelihood of harm in the Foreign Country and the Foreign Country government acquiesces to the commitment of ninety percent of drug-related crimes within its borders. To claim CAT protection, the non-citizen must demonstrate both a likelihood of harm in the country of deportation and government acquiesce to the likely harm. While cooperating with federal prosecutors, Mr. X's status as an informant became known, and soon after he began receiving threats from Gang B, a violent transnational gang with strong ties to the Foreign Country. Further, in the Foreign Country, Gang B regularly relies on government actors to aid in its crimes. The Board should grant Mr. X's CAT claim outright.

(a) *Gang B Ascertained Mr. X's Identity as an Informant and Gang B's Subsequent Harassment Demonstrates a Likelihood of Torture in the Foreign Country.*

Mr. X's cooperation with federal prosecutors resulted in the conviction of a known member of Gang B, a murderous gang with a presence in both the United States and the Foreign Country.

During the cooperation process, Mr. X's identity was revealed and shared with the gang. Because of this, Mr. X and his family received constant threats from Gang B and Mr. X's brother was forced to flee the family home in the Foreign Country. These facts demonstrate a high likelihood of torture should Mr. X be deported to the Foreign Country. This Board reviews these questions of fact under a clearly erroneous standard. 8 C.F.R. § 1003.1(d)(3)(i). Additionally, this Board must "accept as true" any facts introduced on a motion to reopen absent a showing they are "inherently unbelievable." *Najmabadi v. Holder*, 597 F.3d 983, 990 (9th Cir. 2010).

To qualify for CAT relief, noncitizens must demonstrate that they are "more likely than not" to "be tortured if removed to the proposed country of removal." 8 C.F.R. § 1208.16(c)(2). Torture includes acts "by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as . . . punishing him . . . for an act . . . he has committed." 8 C.F.R. § 208.18(a)(1). In determining likelihood, the noncitizen must demonstrate "greater than a fifty percent chance . . . that he will be tortured upon return to his or her country of origin." *Mu-Xiang Wang v. Ashcroft*, 320 F.3d 130, 144 n.20 (2d Cir. 2003). Additionally, an agency must "consider *all* evidence . . . regardless of the weight it accords the alien's testimony." *Ramsameachire v. Ashcroft*, 357 F.3d 169, 184 (2d Cir. 2004). Harm or harassment against family members living in the country of deportation strengthens a likelihood showing. *Melgar de Torres v. Reno*, 191 F.3d 307 (2d Cir. 1999).

Harm to Mr. X is likely. In evidence introduced on his motion to reopen, Mr. X declared that soon after his identity was revealed, he began to receive threats from and was eventually beaten by people with ties to Gang B. Mr. X was violently assaulted with a gun outside of a New York nightclub, leading to extensive injuries, hospitalization, and a government-suggested pause on his cooperation activities. 17.1 MTR CAR at 62. During this attack, Mr. X could identify a

friend of G's wife (G being a member of Gang B) in the crowd, and various members of the crowd told Mr. X they had a piece of paper with "proof that [G] got more time in prison because of [X's] cooperation." *Id.*

By cooperating against a known member of Gang B, Mr. X suffered a brutal attack in New York and faces an equally great risk of harm in the Foreign Country. Mr. X, again in his declaration, stated that men "connected with [G] . . . in the [Foreign Country]," are waiting for Mr. X to return "so that they can do something better than in the U.S." 17.1 MTR CAR at 64. Additionally, Mr. X's sister Y stated in her supplementary declaration that Mr. X's older brother Z was forced into hiding, fleeing the family home in the Foreign Country, because Gang B's members knew "they [could] get information about [Mr. X] through Z." 21-6655 CAR at 69-70. Y herself has received threatening phone calls from Gang B stating its members were "watching" her and trying to find out if Mr. X had gone to his mother's home in the Foreign Country, the house Z had to flee from. *Id.* at 69-70. These threats to Mr. X's family, per *Melgar de Torres*, strengthen the likelihood of harm Mr. X faces if deported to the Foreign Country.

Mr. X and his sister Y's testimonies, which were introduced on the motion to reopen and must be taken as true, critically demonstrate that Mr. X's likelihood of torture was increased both in the United States and in the Foreign Country. Mr. X has already been beaten in the United States by people with ties to Gang B and that risk of harm is just as great in the Foreign Country given the harassment of his brother and sister there. Mr. X fears he will likely be murdered – the paradigmatic harm that CAT was intended to guard against, if he is deported to the Foreign Country.

(b) *Gang B Routinely Operates in the Foreign Country with the Aid and Collaboration of the Government, Demonstrating Government Acquiescence.*

The high likelihood of torture Mr. X faces is facilitated by the Foreign Country government, which routinely aids gang violence. Despite some efforts by the police to enact reform, the applicable case law requires more to show that the government has not acquiesced.

To establish acquiescence, a noncitizen bears the burden to show the torture was "instigated . . . or with the consent or acquiesce of a public official or other person acting in their official capacity." *Mu Xiang Lin v. United States*, 432 F.3d 156, 159 (2d Cir. 2005). Government acquiescence "requires only that "government officials know of or remain willfully blind to an act and thereafter breach their legal responsibility to prevent it." *Khouzam v. Ashcroft*, 361 F.3d 161, 170 (2d Cir. 2004). Finally, even if some individuals "take action to prevent torture" within a government that "on the whole, is incapable of actually preventing [the] torture," it would not be "inconsistent" to find "government acquiescence" in that scenario. *Goulding v. Garland,* 851 Fed. Appx. 229, 231 (2d Cir. 2021) (quoting *De La Rosa v. Holder*, 598 F.3d 103, 110 (2d Cir. 2010)).

Gang B routinely works with and relies on the Foreign Country's government officials to conduct its operations. G is a member of Gang B. Mr. X in his declaration stated that G told Mr. X he regularly sends payments to family members in the Foreign Country government not out of any familial obligation, but solely to "aid [his] own criminal operations." 17.1 MTR CAR at 63. This is in keeping with reports establishing that over ninety percent of all drug-related offenses in the Foreign Country are committed with the aid of government officials exactly like the ones G regularly provides payments to. 21-6655 CAR at 298.

Again in Mr. X's declaration, he asserted that members of Gang B want to wait until he is back in the Foreign Country to "do something better than in the United States." 17.1 CAR at 64. In other words, Gang B are choosing to harm Mr. X in the Foreign Country with the government's acquiescence, as opposed to in the United States. This statement shows not only that the individuals

threatening Mr. X have the capability to harm him in the Foreign Country but also would *prefer* to harm him there because of the aid they receive from police.

Additionally, even though the Foreign Country government took action to fire some corrupt police officers, this does not sufficiently rebut a claim of acquiescence. 20-363 CAT at 80. In *De La Rosa v. Holder*, on a remarkably similar set of facts, the Second Circuit held that a Dominican Republic citizen who had collaborated with federal prosecutors in the United States possessed a viable CAT claim, even though the Dominican government had taken steps to curtail violence and cut back on corruption. *De La Rosa v. Holder*, 598 F.3d 103 (2d Cir. 2010).

In *De La Rosa*, the Second Circuit held "[w]here a government contains officials that would be complicit in torture, and that government, on the whole, is admittedly incapable of actually preventing torture, the fact that some officials take action to prevent the torture," is "neither inconsistent with a finding of government acquiescence nor necessarily responsive to the question of whether torture would be inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." *Id.* at 110. Despite some government efforts to reduce crime through the termination of officers, Gang B operates with an impunity that allows ninety percent of drug related crimes to be committed with the aid of the government. When the commission of drug related crimes is so synonymous with government assistance, the government must be deemed as acquiescing.

Mr. X's declaration and the supplementary reports on government acquiescence introduced in his motion to reopen, which must be taken as true, demonstrate that Mr. X faces a high likelihood of harm both in the United States and the Foreign Country, and that Gang B operates with near impunity due to the Foreign Country government's acquiescence. Mr. X has satisfied both elements of his CAT claim and this Board should grant relief outright.

Applicant Details

First Name	**Audrey**
Middle Initial	**E**
Last Name	**Van Winkle**
Citizenship Status	**U. S. Citizen**
Email Address	**audreyvanwinkle@gmail.com**
Address	**Address** Street **309 South Main Street, Apartment 8** City **Lexington** State/Territory **Virginia** Zip **24450** Country **United States**
Contact Phone Number	**5712363932**

Applicant Education

BA/BS From	**University of Virginia**
Date of BA/BS	**May 2020**
JD/LLB From	**Washington and Lee University School of Law** **http://www.law.wlu.edu**
Date of JD/LLB	**May 10, 2024**
Class Rank	**15%**
Law Review/Journal	**Yes**
Journal(s)	**Washington and Lee Law Review**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**No**

Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Trammell, Alan
atrammell@wlu.edu
Weiss, Allison
aweiss@wlu.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

309 S. Main Street
Lexington, VA 24450

June 12, 2023

The Honorable Juan R. Sanchez
United States District Court for the Eastern District of Pennsylvania
James A. Byrne United States Courthouse
601 Market Street
Philadelphia, PA 19106

Dear Judge Sanchez:

I am a rising third-year law student at Washington and Lee University School of Law and member of the *Washington and Lee Law Review*. I am writing to express my interest in a 2024–2025 term clerkship in your chambers.

Enclosed please find my resume, law school transcript, and writing sample. Also enclosed is contact information for my references: Professors Alan Trammell and Allison Weiss.

I would appreciate an opportunity to interview with you and look forward to hearing from you. Thank you for your time and consideration.

Respectfully,

Audrey Van Winkle

Audrey Van Winkle

Vanwinkle.a24@law.wlu.edu | 571-236-3932 | 309 S. Main Street, Lexington, VA

EDUCATION

Washington and Lee University School of Law, *Lexington, VA*
Candidate for J.D., May 2024
GPA: 3.678, Top 15%
Activities: *Washington and Lee Law Review*, Lead Articles Editor
Clinic & Practicum: Black Lung Clinic (2023–24 academic year); Start-Up Business Practicum (2022–23 academic year)

University of Virginia, *Charlottesville, VA*
Bachelor of Arts: Economics and History, May 2020

Lund Universitet, *Lund, Sweden,* Spring 2019

WORK EXPERIENCE

Legal Aid Justice Center **May 2023 – August 2023**
Summer Law Clerk, Economic Justice Unit

Legal Services of Northern Virginia **June 2022 – August 2022**
Summer Law Clerk

- Worked closely with supervising attorney to launch an eviction expungement clinic pilot program; held 7 weekly clinics serving 30 clients and expunging 56 eviction cases; designed materials and best practices for the clinic.
- Assisted in Low-Income Tax Clinic by meeting with clients, taking affidavits, conducting legal research, and drafting Response to Summary Judgment for U.S. Tax Court.
- Drafted petitions, motions, and bills of particulars for guardianship, unlawful ouster, and warrant in debt cases.
- Attended courthouse outreach services and court proceedings in housing and pro se dockets weekly.

President's Commission on the University in the Age of Segregation **June 2019 – March 2020**
Intern

- Conducted archival research, document digitization and professional transcription of historical documents related to the history of the University of Virginia, 1865 to 1980.

City of Charlottesville **June 2018 – August 2018**
Lifeguard

Dunn Loring Swim Club
Front Desk Worker **May 2021 – August 2021**
Lifeguard & August Manager **June 2013 – August 2017**

- Assisted in scheduling and payroll for a staff of 50 lifeguards; 5-time recipient of "Guard of the Week."

VOLUNTEER EXPERIENCE

Blue Ridge Legal Services, ***Volunteer*** **October 2021 – Spring 2022**

- Answered phones and screened clients to start the client intake process.

Virginia Department of Health Medical Reserve Corp, ***Volunteer*** **March 2021 – May 2021**

- Worked as a non-medical volunteer at health department COVID-19 vaccination sites.

Madison House Volunteer Organization, ***Volunteer*** **November 2017 – March 2020**

- Head coach for local youth basketball and youth soccer organizations leading weekly practices and games.
- Volunteered at a community garden which provided fresh produce to low-income community members.

Print Date: 06/01/2023
Page: 1 of 2
Student: Audrey Elizabeth Van Winkle

WASHINGTON AND LEE UNIVERSITY
Lexington, Virginia 24450-2116

SSN: XXX-XX-2000 **Entry Date:** 08/30/2021
Date of Birth: 11/24/XXXX **Academic Level:** Law

2021-2022 Law Fall
08/30/2021 - 12/18/2021

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 109	CIVIL PROCEDURE	B+	4.00	4.00	13.32	
LAW 140	CONTRACTS	B+	4.00	4.00	13.32	
LAW 163	LEGAL RESEARCH	B	0.50	0.50	1.50	
LAW 165	LEGAL WRITING I	A-	2.00	2.00	7.34	
LAW 190	TORTS	A	4.00	4.00	16.00	
	Term GPA: 3.550	**Totals:**	14.50	14.50	51.48	
	Cumulative GPA: 3.550	**Totals:**	14.50	14.50	51.48	

2021-2022 Law Spring
01/10/2022 - 04/29/2022

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 130	CONSTITUTIONAL LAW	B+	4.00	4.00	13.32	
LAW 150	CRIMINAL LAW	B+	3.00	3.00	9.99	
LAW 163	LEGAL RESEARCH	B	0.50	0.50	1.50	
LAW 166	LEGAL WRITING II	A-	2.00	2.00	7.34	
LAW 179	PROPERTY	A-	4.00	4.00	14.68	
LAW 195	TRANSNATIONAL LAW	A	3.00	3.00	12.00	
	Term GPA: 3.565	**Totals:**	16.50	16.50	58.83	
	Cumulative GPA: 3.558	**Totals:**	31.00	31.00	110.31	

2022-2023 Law Fall
08/29/2022 - 12/19/2022

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 685	Evidence	A	3.00	3.00	12.00	
LAW 716	Business Associations	A	4.00	4.00	16.00	
LAW 793	Federal Income Tax of Individuals	A-	3.00	3.00	11.01	
LAW 827	Start-Up Business Practicum	A-	2.00	2.00	7.34	
LAW 911	Law Review: 2L	CR	2.00	2.00	0.00	
	Term GPA: 3.862	**Totals:**	14.00	14.00	46.35	
	Cumulative GPA: 3.643	**Totals:**	45.00	45.00	156.66	

Print Date: 06/01/2023
Page: 2 of 2
Student: Audrey Elizabeth Van Winkle

WASHINGTON AND LEE UNIVERSITY
Lexington, Virginia 24450-2116

2022-2023 Law Spring
01/09/2023 - 04/28/2023

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 690	Professional Responsibility	A-	3.00	3.00	11.01	
LAW 701	Administrative Law	A	3.00	3.00	12.00	
LAW 787	Estate and Gift Taxation	A	2.00	2.00	8.00	
LAW 821	Non-Profit Tax Planning & Representation Practicum	A-	3.00	3.00	11.01	
LAW 827	Start-Up Business Practicum	A-	3.00	3.00	11.01	
LAW 911	Law Review: 2L	CR	2.00	2.00	0.00	
	Term GPA: 3.787	**Totals:**	16.00	16.00	53.03	
	Cumulative GPA: 3.678	**Totals:**	61.00	61.00	209.69	

2023-2024 Law Fall
08/28/2023 - 12/18/2023

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 700	Federal Jurisdiction and Procedure		3.00	0.00	0.00	
LAW 707B	Skills Immersion: Business		2.00	0.00	0.00	
LAW 725	Conflict of Laws		3.00	0.00	0.00	
LAW 817	Statutory Interpretation Practicum		4.00	0.00	0.00	
LAW 931	Adv Administrative Litigation Clinic (Black Lung)		5.00	0.00	0.00	
	Term GPA: 0.000	**Totals:**	17.00	0.00	0.00	
	Cumulative GPA: 3.678	**Totals:**	61.00	61.00	209.69	

Law Totals	Credit Att	Credit Earn	Cumulative GPA
Washington & Lee:	61.00	61.00	3.678
External:	0.00	0.00	
Overall:	61.00	61.00	3.678

Program: Law

End of Official Transcript

WASHINGTON AND LEE UNIVERSITY TRANSCRIPT KEY

Founded in 1749 as Augusta Academy, the University has been named, successively, Liberty Hall (1776), Liberty Hall Academy (1782), Washington Academy (1796), Washington College (1813), and The Washington and Lee University (1871). W&L has enjoyed continual accreditation by or membership in the following since the indicated year: The Commission on Colleges of the Southern Association of Colleges and Schools (1895); the Association of American Law Schools (1920); the American Bar Association Council on Legal Education (1923); the Association to Advance Collegiate Schools of Business (1927); the American Chemical Society (1941); the Accrediting Council for Education in Journalism and Mass Communications (1948), and Teacher Education Accreditation Council (2012).

The **basic unit of credit** for the College, the Williams School of Commerce, Economics and Politics, and the School of Law is equivalent to a semester hour.
The **undergraduate calendar** consists of three terms. From 1970-2009: 12 weeks, 12 weeks, and 6 weeks of instructional time, plus exams, from September to June. From 2009 to present: 12 weeks, 12 weeks, and 4 weeks, September to May.
The **law school calendar** consists of two 14-week semesters beginning in August and ending in May.

Official transcripts, printed on blue and white safety paper and bearing the University seal and the University Registrar's signature, are sent directly to individuals, schools or organizations upon the written request of the student or alumnus/a. Those issued directly to the individual involved are stamped "Issued to Student" in red ink. ***In accordance with The Family Educational Rights and Privacy Act of 1974, as amended, the information in this transcript is released on the condition that you permit no third-party access to it without the written consent from the individual whose record it is. If you cannot comply, please return this record.***

Undergraduate

Degrees awarded: Bachelor of Arts in the College (BA); Bachelor of Arts in the Williams School of Commerce, Economics and Politics (BAC); Bachelor of Science (BS); Bachelor of Science with Special Attainments in Commence (BSC); and Bachelor of Science with Special Attainments in Chemistry (BCH).

Grade	Points	Description
A+	4.00	4.33 prior to Fall 2009
A	4.00	Superior.
A-	3.67	
B+	3.33	
B	3.00	Good.
B-	2.67	
C+	2.33	
C	2.00	Fair.
C-	1.67	
D+	1.33	
D	1.00	Marginal.
D-	0.67	
E	0.00	Conditional failure. Assigned when the student's class average is passing and the final examination grade is F. Equivalent to F in all calculations
F	0.00	Unconditional failure.

Grades not used in calculations:

I	-	Incomplete. Work of the course not completed or final examination deferred for causes beyond the reasonable control of the student.
P	-	Pass. Completion of course taken Pass/Fail with grade of D- or higher.
S, U	-	Satisfactory/Unsatisfactory.
WIP	-	Work-in-Progress.
W, WP, WF	-	Withdrew, Withdrew Passing, Withdrew Failing. Indicate the student's work up to the time the course was dropped or the student withdrew.

Grade prefixes:

R Indicates an undergraduate course subsequently repeated at W&L (e.g. RC-).

E Indicates removal of conditional failure (e.g. ED = D). The grade is used in term and cumulative calculations as defined above.

Ungraded credit:

Advanced Placement: includes Advanced Placement Program, International Baccalaureate and departmental advanced standing credits.

Transfer Credit: credit taken elsewhere while not a W&L student or during approved study off campus.

Cumulative Adjustments:

Partial degree credit: Through 2003, students with two or more entrance units in a language received reduced degree credit when enrolled in elementary sequences of that language.

Dean's List: Full-time students with a fall or winter term GPA of at least 3.400 *and* a cumulative GPA of at least 2.000 *and* no individual grade below C (2.0). Prior to Fall 1995, the term GPA standard was 3.000.

Honor Roll: Full-time students with a fall or winter term GPA of 3.750. Prior to Fall 1995, the term GPA standard was 3.500.

University Scholars: This special academic program (1985-2012) consisted of one required special seminar each in the humanities, natural sciences and social sciences; and a thesis. All courses and thesis work contributed fully to degree requirements.

Law

Degrees awarded: Juris Doctor (JD) and Master of Laws (LLM)

Numerical Grade*	Letter Grade**	Points	Description
4.0	A	4.00	
	A-	3.67	
3.5		3.50	
	B+	3.33	
3.0	B	3.00	
	B-	2.67	
2.5		2.50	
	C+	2.33	
2.0	C	2.00	
	C-	1.67	
1.5		1.50	This grade eliminated after Class of 1990.
	D+	1.33	
1.0	D	1.00	A grade of D or higher in each required course is necessary for graduation.
	D-	0.67	Receipt of D- or F in a required course mandates repeating the course.
0.5		0.50	This grade eliminated after the Class of 1990.
0.0	F	0.00	Receipt of D- or F in a required course mandates repeating the course.

Grades not used in calculations:

-	WIP	-	Work-in-progress. Two-semester course.
I	I	-	Incomplete.
CR	CR	-	Credit-only activity.
P	P	-	Pass. Completion of graded course taken Pass/Not Passing with grade of 2.0 or C or higher. Completion of Pass/Not Passing course or Honors/Pass/Not Passing course with passing grade.
-	H	-	Honors. Top 20% in Honors/Pass/Not Passing courses.
F	-	-	Fail. Given for grade below 2.0 in graded course taken Pass/Fail.
-	NP	-	Not Passing. Given for grade below C in graded course taken Pass/Not Passing. Given for non-passing grade in Pass/Not Passing course or Honors/Pass/Not Passing course.

* Numerical grades given in all courses until Spring 1997 and given in upperclass courses for the Classes of 1998 and 1999 during the 1997-98 academic year.
** Letter grades given to the Class of 2000 beginning Fall 1997 and for all courses beginning Fall 1998.

Cumulative Adjustments:

Law transfer credits - Student's grade-point average is adjusted to reflect prior work at another institution after completing the first year of study at W&L.

Course Numbering Update: Effective Fall 2022, the Law course numbering scheme went from 100-400 level to 500-800 level.

Office of the University Registrar
Washington and Lee University
Lexington, Virginia 24450-2116
phone: 540.458.8455
email: registrar@wlu.edu

University Registrar

220707

WASHINGTON AND LEE UNIVERSITY
SCHOOL OF LAW
LEXINGTON, VA 24450

June 05, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I understand that Audrey Van Winkle has applied for a clerkship in your chambers, and I write to offer her my enthusiastic recommendation.

Audrey and I first became acquainted during the summer of 2022 when she asked me to supervise her Law Review Note on the plight of indigent tenants facing eviction proceedings. Since that initial meeting, I have always been struck by Audrey's clear-eyed understanding of the ways that legal systems often fail the most vulnerable members of society and her desire to bring about meaningful change in her community.

Audrey's Note focuses on Virginia's appeal bond waiver, which normally allows indigent defendants to appeal cases from General District Court to Circuit Court. Specifically, she critiques a statutory exemption to the appeal bond waiver that, in essence, prevents indigent tenants from appealing an eviction order. Her Note carefully explores the statutory framework, the labyrinthine system that indigent tenants must navigate (usually without the assistance of counsel), and the systematic injustices that often result. Her work displays deep knowledge of a complex network of statutes, courts, and predictable power dynamics. Even more impressively, though, Audrey's writing demonstrates careful and thoughtful analysis of both the broader problem facing indigent tenants as well as the nuanced mechanics of how the entire system works. She interrogates legislative assumptions and creatively explores a range of potential legislative and judicial responses—from surgical interventions to bolder attempts to give vulnerable people greater access to justice.

As Audrey's supervisor, I hope that I offered constructive advice during the Note-writing process, but I can attest to how much I learned from her along the way. As a scholar of federal courts and federal civil procedure, I remain acutely aware that we teach first-year students an idealized version of how civil litigation should work. A number of colleagues who write in this space rightly challenge us to equip our students with a more complete picture of how civil litigation actually plays out—particularly in the courts where poor and pro se litigants often find themselves. To my mind, engaging with these questions about meaningful access to justice ranks among the most important work that lawyers can do to improve their neighbors' lives and communities. I remain grateful to Audrey for helping educate me about an area that I had not explored in depth and that I am excited to discuss in future classes.

In short, I have immense respect for Audrey's intellectual, writing, and analytical abilities, and I have every confidence that she will make an outstanding clerk. I would be remiss if I did not add that she is a true delight to have as a student, and I look forward to having her in my Federal Jurisdiction and Procedure class in the fall. She is a careful listener and has an easygoing, engaging demeanor. From all that I have observed, Audrey enjoys enormous respect among her peers at the law school. This unique combination of intellect and empathy ideally equips her to become the type of lawyer who will effect genuine social change.

I could not recommend Audrey to you more highly, and I hope that you will not hesitate to contact me if I can tell you anything else that would helpful.

Sincerely,

Alan M. Trammell
Associate Professor of Law

Alan Trammell - atrammell@wlu.edu

WASHINGTON AND LEE UNIVERSITY
SCHOOL OF LAW
LEXINGTON, VA 24450

June 05, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I am delighted to write a letter of recommendation on behalf of Audrey Van Winkle. I taught Audrey legal writing during the 2021-2022 school year at Washington and Lee School of Law. Legal writing is a small class of about 20 students. It requires students to actively engage: every class, students must write individually or in groups and analyze and discuss various components of legal analysis. As a result, I got to know Audrey well over the course of the year. Audrey developed into a very skilled legal writer and thinker. As a result, I think she would make a wonderful addition to chambers.

Audrey did very well in my class. In the fall semester she received an A-, a grade reserved only for the very top of the class. There are two main assignments in the fall, both objective memoranda. On both assignments she received one of the highest grades in the class. Her memos were clear, well-reasoned and thorough.

In the spring, the course transitioned to persuasive writing and here, Audrey also excelled. For both the trial court memorandum and appellate brief, Audrey was able to find the relevant cases, persuasively analyze them, and draft clear and precise prose. If there was any part of the class that Audrey struggled with, it was the oral argument requirement. She was very nervous but worked hard to overcome her fear of public speaking. Audrey and I talked about strategies for effective oral advocacy even in spite of her nerves. Audrey extensively prepared for oral arguments with a determined attitude and effectively argued for her client.

Finally, Audrey is pleasant and friendly. She is easy to get along with, diligent, and agreeable. I think Audrey would be an extremely capable clerk. I highly recommend her.

Sincerely,

Allison Weiss
Professor of Practice

Allison Weiss - aweiss@wlu.edu

Audrey Van Winkle

Vanwinkle.a24@law.wlu.edu | 571-236-3932 | 309 S. Main Street, Lexington, VA

Writing Sample

The attached writing sample is an excerpt of my Law Review Student Note: *Courts of Last Resort? How Virginia Statute Prevents Indigent Tenants from Accessing Appellate Review.* I received limited editorial feedback from the Law Review's Executive Editors which I incorporated into this piece.

The Note explores the validity of excluding tenants from accessing the indigent appeal bond waiver of Section 16.1-107 under both the Virginia and Federal Constitutions; examines the barrier the appeal bond poses to fair and equal access to the court system; and proposes legislative, state and federal judicial solutions that would allow indigent tenants equitable access to Circuit Court and appellate review.

I have excerpted Part II, which focus on civil appellate rights both federally and in Virginia, and Part III, which focuses on the right to a jury trial in civil cases both federally and in Virginia. I am happy to provide a full copy of my Note upon request.

II. THE RIGHT TO APPEAL

The Supreme Court has repeatedly disclaimed the existence of constitutional protections for civil appeals.[87] The Supreme Court has been able to disclaim the existence of a constitutional right to appeal because each state has its own civil appellate protections in place via statute or state constitution.[88] Virginia was the last state to do so in 2022 when it created the right to appeal to the Virginia Court of Appeals.[89]

A. *The Right to Appeal: Due Process and Equal Protection Protections*

Although no Federal constitutional right to appeal exists,[90] the Supreme Court has extended Due Process and Equal Protection Clause protections to indigent appellants' ability to access appellate review in certain contexts.

Limited Due Process and Equal Protection Clause protections exist for indigent litigants seeking to proceed in forma pauperis—seeking to proceed without paying costs.[91] The ability of an indigent litigant "to proceed in forma pauperis is grounded in a common law

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87 *See* Pennzoil Co. v. Texaco, Inc., 481 U.S. 1, 31 n.4 (1987) (Stevens, J., concurring) (disclaiming constitutional protection for civil appeals); Griffin v. Illinois, 351 U.S. 12, 18 (1956) ("It is true that a State is not required by the Federal Constitution to provide appellate courts or a right to appellate review at all."); Cobbledick v. United States, 309 U.S. 323, 325 (1940) ("[T]he right to a judgment from more than one court is a matter of grace and not a necessary ingredient of justice . . . ."). *But see* Cassandra Burke Robertson, *The Right to Appeal*, 91 N.C. L. REV. 1219, 1233 (2013) (observing that because "most jurisdictions granted a statutory right of appeal . . . statements [disclaiming appellate constitutional protections are] almost always dicta.").

88 Robertson, *supra* note 87, at 1234.

89 *See* VA. CODE ANN. § 17.1-405 ("Any aggrieved party may appeal to the Court of Appeals from . . . any final decision of a circuit court.").

90 *But see* Robertson, *supra* note 87, at 1241–45 (arguing that procedural due process protections should be extended to appellate review via application of the Mathews test).

91 *See infra* footnotes 92–101 and accompanying text.

right of access to the courts and constitutional principles of due process."[92] Despite cases from the Warren Court that suggest that discrimination on the basis of wealth (or lack thereof) would be suspect under the Equal Protection Clause,[93] jurisprudence since *San Antonio Independent School District v. Rodriguez*[94] asserts that the poor are neither a quasi-suspect nor suspect class under the Equal Protection Clause of the Fourteenth Amendment.[95]

Due Process protections exist in a limited manner for indigent litigants on the basis of fundamental rights. The Court examined due process in the context of access to courts in *Boddie v. Connecticut*.[96] The central holding being that in cases involving indigent litigants: "Due process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard."[97] In a *Boddie* concurrence, Justice Brennan recognized a "constitutional right of poor people to access civil

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92 C.S. v. W.O., 230 Cal. App. 4th 23, 30 (2d Dist. 2014).

93 *See* Harper v. Virginia State Bd. of Elections, 383 U.S. 663, 668 (1966) (invalidating a poll tax on the basis that using wealth or affluence as a qualification to vote was impermissible discrimination); Douglas v. People of State of Cal., 372 U.S. 353, 355 (1963) ("[T]here can be no equal justice where the kind of an appeal a man enjoys depends on the amount of money he has." (internal citations omitted)); Griffin v. Illinois, 351 U.S. 12, 17 (1956) ("a State can no more discriminate on account of poverty than on account of religion, race, or color.").

94 411 U.S. 1 (1973) (upholding a Texas state financing scheme that funded education in wealthier districts at the expense of poorer school districts).

95 *See* Harris v. McRae, 448 U.S. 297, 323 (1980) ("[T]his Court has held repeatedly that poverty, standing alone, is not a suspect classification."(citations omitted)). *But see* Henry Rose, *The Poor As A Suspect Class Under the Equal Protection Clause: An Open Constitutional Question*, 34 NOVA L. REV. 407, 419–21 (2010) (positing both that the poor likely meet factors required to be considered a suspect class and that the Supreme Court has never actually applied these factors to the question of the poor as a suspect class).

96 401 U.S. 371 (1971).

97 *Id.* at 377.

courts to vindicate their legal rights."[98] Yet, *Boddie* did not establish an independent fundamental right to access court without paying fees. Instead, the decision rested upon the underlying case implicating fundamental rights related to the dissolution of marriage.[99]

Supreme Court decisions requiring litigants proceeding in forma pauperis access to appellate review rest on fundamental rights analysis. If the indigent appellant's interest is not fundamental, a state may require the payment of court fees and costs by indigent litigants.[100] Thus, courts apply rational basis scrutiny to most due process claims involving appellate review and indigent tenants.

Applying a rational basis to due process and equal protection claims, the Supreme Court has recognized some procedural protections for indigent tenants once access to appellate review is afforded by state statute or state constitution.[101] For example, while

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98 Henry Rose, *Why Do the Poor Not Have a Constitutional Right to File Civil Claims in Court Under Their First Amendment Right to Petition the Government for a Redress of Grievances?*, 44 SEATTLE U. L. REV. 757, 763 (2021); *see also Boddie*, 401 U.S. at 387–88 (Brennan, J., concurring in part)("It is an unjustifiable denial of a hearing, and therefore a denial of due process, to close the courts to an indigent on the ground of nonpayment of a fee. . . . The right to be heard in some way at some time extends to all proceedings entertained by courts.").

99 *See Boddie*, 401 U.S. at 382–83 (emphasizing the opinion of the court applied only to indigent persons seeking divorce).

100 *See* Ortwein v. Schwab, 410 U.S. 656, 660 (1973) (per curiam) (upholding $25 filing fee for civil appeals required for an indigent litigant to appeal the reduction of his welfare benefits did not violate due process or equal protection clauses of the Fourteenth Amendment); Bernstein v. State of N. Y., 466 F. Supp. 435, 438 (S.D.N.Y.), *aff'd sub nom.* Bernstein v. State, 614 F.2d 1285, (2d Cir. 1979) (upholding a $10 fee for filing notice of appeal for review of a verdict reached after *a full trial before a jury* as not violative of an indigent appellant's Fourteenth Amendment rights).

101 *See* Griffin v. Illinois, 351 U.S. 12 (1956) (holding that that an Illinois law that required indigent criminal appellants to purchase a trial transcript to access appellate review violated the Due Process and Equal Protection Clauses of the Fourteenth Amendment); *see also* Lindsey v. Normet, 405 U.S. 56, 78 (1972) ("When an appeal is afforded, however, it cannot be granted to some litigants and capriciously or arbitrarily denied to others without violating the Equal Protection Clause.").

eviction appeal bonds generally do not violate the Equal Protection and Due Process clauses of the Fourteenth Amendment, the Supreme Court struck down an Oregon statute requiring a double-bond for eviction cases on Fourteenth Amendment grounds because it found the heightened appeal bond requirement to be arbitrary and irrationally discriminatory, in other words, lacking a rational basis, against the tenant appellants.[102] While the right to appellate review is not an essential requirement of due process, a state that provides a means of appeal may not put limitations on it that are discriminatory or arbitrary.[103] Appeal bonds do not violate due process so long as the bond is reasonable and not excessive.[104] A 1983 challenge to Virginia's old appeal bond statute requiring a bond for "rent which has accrued and may accrue but not to exceed one year's rent" was found not to violate the Equal Protection Clause by the Fourth Circuit.[105] The Court's reasoning suggested that the limit of a year's rent placed on the Virginia appeal bond was reasonably related to the valid state objectives of "guarding

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102 *See Lindsey*, 405 U.S. at 78 (1972)

> The discrimination against the poor, who could pay their rent pending an appeal but cannot post the double bond, is particularly obvious. For them, as a practical matter, appeal is foreclosed, no matter how meritorious their case may be. The nonindigent FED appellant also is confronted by a substantial barrier to appeal faced by no other civil litigant in Oregon. The discrimination against the class of FED appellants is arbitrary and irrational, and the double-bond requirement of ORS s 105.160 violates the Equal Protection Clause.

103 16D C.J.S. Constitutional Law § 1997.

104 *Lindsey*, 405 U.S. at 78 (1972).

105 Letendre v. Fugate, 701 F.2d 1093, 1095 (4th Cir. 1983).

> The Virginia statutory requirement of an appeal bond for rent which has accrued and may accrue but not to exceed one year's rent is well within the language of Lindsey permitting a bond to guard a damage award already made or to insure a landlord against loss of rent if the tenant remains in possession.

a damage award already made" and "insuring a landlord against loss of rent if the tenant remains in possession."[106] Nor was the appeal bond amount discriminatory nor arbitrary.[107]

For indigent appellants, courts apply rational basis scrutiny to most Equal Protection or Due Process claims involving the right to appellate review.

B. *The Right to Appeal in Virginia*

In Virginia, absent statutory authority or constitutional mandate, no party has a right to a de novo appeal of a General District Court judgment to Circuit Court.[108] The Virginia Supreme Court instructs that the "statutory procedural prerequisites must be observed" before a de novo appeal is taken from General District Court to Circuit Court.[109] For indigent tenants, this means that an appeal bond must be posted according to statute before appealing de novo to Circuit Court as there is no statutory authority to appeal to Circuit Court in cases of unlawful detainer without first paying the appeal bond.[110] Without statutory

106 *Letendre*, 701 F.2d at 1095 (4th Cir. 1983).

107 *Letendre*, 701 F.2d at 1095 (4th Cir. 1983).

108 *See* Robert and Bertha Robinson Fam., LLC v. Allen, 810 S.E.2d 48, 56 (Va. 2018)

> "In case after case" involving appeals from courts not of record, "we have in clear, unequivocal, and emphatic language repeatedly said that '[t]he right of appeal is statutory and the statutory procedural prerequisites must be observed.' " Covington Virginian, Inc., 182 Va. at 543, 29 S.E.2d at 409 (citation omitted)."The right of appeal is statutory," Brooks v. Epperson, 164 Va. 37, 40, 178 S.E. 787, 788 (1935), because it is "a process of civil law origin," Tyson, 116 Va. at 252, 81 S.E. at 61 (citation omitted).This history directly impacts our analysis of the issue in this case by establishing the first premise: Absent a statutory authorization or a constitutional mandate, no party has a right to a de novo appeal of the GDC's judgment in the circuit court. Customary practices, by themselves, cannot create this right.

109 *Id.*

110 *See* VA. CODE ANN. §§ 16.1-107; 8.01-129.

authorization, the right of an indigent tenant to appeal de novo without posting an appeal bond must rest upon a constitutional mandate.[111]

The Virginia Constitution holds sacred access to a jury in civil trials to citizens of the Commonwealth.[112] This constitutional mandate supports the idea that indigent tenants hold a right to a de novo appeal to Circuit Court—where a tenant can request a jury trial—without satisfying the statutory requirement of posting an appeal bond. [113] Part III of this Note explores the constitutional rights and common law access to a jury in trespass, ejectment, unlawful detainer actions, as well as actions related to the payment of rents.[114]

III. THE RIGHT TO JURY TRIAL IN CIVIL CASES

A. *Historical Origins of the American Civil Jury Trial*

The right to a jury in civil trials is enshrined in both the Federal[115] and Virginia Constitution.[116] American colonists adopted and adapted the English practice of the civil jury trial.[117] The use of jury trial in civil cases was a "familiar and well-ensconced feature of pre-1787 political life."[118] In the years preceding the American Revolution, civil juries were

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111 *See infra* Part III.

112 *See* VA CONST. ART. 1, § 11 (" . . . in controversies respecting property, and in suits between man and man, trial by jury is preferable to any other, and ought to be held sacred.").

113 *See infra* Part III.

114 *See infra* Part III.

115 *See* U.S. CONST. amend. VII ("In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved . . . .").

116 *See* VA CONST. ART. 1, § 11 (" . . . in controversies respecting property, and in suits between man and man, trial by jury is preferable to any other, and ought to be held sacred.").

117 ELLEN E. SWARD, THE DECLINE OF THE CIVIL JURY 90 (2001) ("But jury practice in colonial America varied considerably among the colonies and between the various colonies and England.").

118 Charles W. Wolfram, *The Constitutional History of the Seventh Amendment*, 57 Minn. L. Rev. 639, 653 (1973).

viewed as an important tool to attack English interests in Colonial America.[119] English authorities would attempt to circumvent the power of American jurors by moving controversial cases from courts of law into chancery and admiral courts.[120] Colonial legal writers and political theorists, drawing from Blackstone, were of the opinion that trial by jury was an important right of freemen.[121] Blackstone posited that the civil jury was a check on the privileged and aristocratic judges who "will have frequently an involuntary bias towards those of their own rank and dignity."[122] Colonial and early Americans advanced the idea of the civil jury for both ideological and pragmatic reasons. Civil juries were viewed as protection for local debtors;[123] a check on judges that received little formal legal training;[124] and as a way to frustrate unwise legislative or administrative actions.[125]

All thirteen original states retained civil juries via state constitution, statute, or by continuation of colonial judicial practices.[126] In 1776, the Virginia Declaration of Rights, a precursor to the Bill of Rights, enshrined the right to a jury in civil cases within the

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119 SWARD, *supra* note 117, at 90–91 ("Civil laws whose intent or effect was to generate revenue for English interests were under attack by juries that refused to enforce them.")

120 *See* SWARD, *supra* note 117, at 91 (noting that these were equitable courts where a jury was not required).

121 Wolfram, *supra* note 118, at 653–54.

122 *See* SUJA A. THOMAS, THE MISSING AMERICAN JURY 19 (2016) (citing 3 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 314–15, 373, 395).

123 *See* SWARD, *supra* note 117, at 91–92 (suggesting that Anti-federalists, who were more likely to be debtors, sought a civil jury to weaken debt collection within federal courts).

124 *See* SWARD, *supra* note 117, at 93 (discussing the poor legal training of colonial judges).

125 *See* SWARD, *supra* note 117, at 93 (noting the important role of revolution-era civil juries played in frustrating "oppressive British laws").

126 *See* Wolfram, *supra* note 118, at 655 ("The right to trial by jury was probably the only one universally secured by the first American state constitutions . . . ." (quoting L. LEVY, FREEDOM OF SPEECH AND PRESS IN EARLY AMERICAN HISTORY—LEGACY OF SUPPRESSION 281) (1963 reprint)).

commonwealth.[127] Every subsequent version of the Virginia Constitution has included substantially similar language.[128] In 1791, the ratification of the Seventh Amendment guaranteed a right to a civil jury in certain federal proceedings.[129]

B. *The Federal Right to Jury Trial in Civil Trials.*

The Seventh Amendment preserves the right to a jury in suits at common law. This excludes equitable and admirable remedies from the right to a civil jury.[130] The exclusion of equitable remedies from civil juries was complicated by the merger of law and equity in federal courts.[131] Despite the complications that arose from the merger of law and equity, ample direction from the Supreme Court exists on how to properly perform an analysis on the existence of a right to a jury trial in a civil case brought before federal court, or what counts as "suits in common law".[132]

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127 *See* VA. DECLARATION OF RIGHTS of 1776, art. 11. ("That in controversies respecting property, and in suits between man and man, the ancient trial by jury is preferable to any other and ought to be held sacred.").

128 *See* A.E.D. Howard, 1 *Commentaries on the Constitution of Virginia* 244–45 (1974) (noting the minimal changes in article 11 of the Virginia Constitution of 1776, of 1851, of 1864, of 1870, of 1902, of 1928, and the Virginia Constitution of 1971).

129 *See* U.S. CONST. amend. VII ("In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved . . . .")

130 *See* Samuel Bray, *Equity, Law, and the Seventh Amendment*, 100 TEXAS L. REV. 487, 471 (2022) (discussing the boundaries of the Seventh Amendment).

131 *See, generally*, Eric J. Hamilton, *Federalism and The State Civil Jury Rights*, 65 STAN. L. REV. 815 (discussing the evolution of the right to a civil jury after the merger of law and equity).

132 *See, e.g.*, Wooddell v. Int'l Bhd. of Elec. Workers, Loc. 71, 502 U.S. 93, 98 (1991) (holding a union member was entitled to a jury trial on a LMRDA cause of action); Chauffeurs Loc. No. 391 v. Terry, 494 U.S. 558, 564, 573 (1990) (holding that the remedy of backpay is legal in nature and finding respondents are entitled to a jury trial); Granfinanciera, S.A. v. Nordberg, 492 U.S. 33, 49 (1989)("Respondent's fraudulent conveyance action plainly seeks relief traditionally provided by law . . . the Seventh Amendment guarantees petitioners a jury trial upon request).

The general rule is that the court should consider whether a claim is analogous to one that would have been brought in law or equity in 1791, and whether the remedy sought is legal or equitable.[133] A historical inquiry is mandated by language of the Seventh Amendment.[134] The type of historical inquiry requires more than a surface level inquiry into historical materials, instead it requires federal judges have a deep familiarity with legal history to both understand and apply the anachronisms of law and equity in the common law system.[135]

C. *Non-incorporation of the Seventh Amendment.*

While the Seventh Amendment preserves the right to a jury trial in federal courts, the Supreme Court has consistently held that the Seventh Amendment is not incorporated via the Fourteenth amendment to the states.[136] The Supreme Court has not accepted the theory of "total incorporation" suggested by Justice Black in which the first eight amendments are incorporated en mass to the states via the Fourteenth amendment.[137] The Supreme Court set a new framework for determining whether a enumerated right should be incorporated to the state via the fourteenth amendment in *McDonald v. City of Chicago* which

133 Bray, *supra* note 130, at 468.

134 Bray, *supra* note 130, at 477.

135 Bray, *supra* note 130, at 487.

136 *See* Minneapolis & St. L.R. Co. v. Bombolis, 241 U.S. 211 (1916) (declining to incorporate the Seventh Amendment to the states); Gasperini v. Center for Humanities, Inc., 518 U.S. 415 (1996) (same); Brady v. Southern Ry. Co., 320 U.S. 476 (1943) (same); Mountain Timber Co. v. State of Washington, 243 U.S. 219 (1917) (same); Justices v. Murray, 76 U.S. 274 (1869) (same).

137 *See* McDonald v. City of Chicago, Ill., 561 U.S. 752, 867 (2010) ("We have never accepted a "'total incorporation"' theory of the Fourteenth Amendment, whereby the Amendment is deemed to subsume the provisions of the Bill of Rights en masse.")(Stevens, J., dissenting); *see also* Suja A. Thomas*, Nonincorporation: The Bill of Rights After McDonald v. Chicago*, 88 NOTRE DAME L. REV. 159 for a discussion on changes to incorporation theory post-McDonald.

incorporated the Second Amendment to the states.[138] This framework requires a originalist analysis of whether the amendment is both "fundamental to our scheme of ordered liberty" and "deeply rooted in this Nation's history and tradition."[139]

Following the reasoning in *McDonald*, the Supreme Court has most recently incorporated the excessive fines clause from the Eighth Amendment to the states in *Timbs v. Indiana*.[140] In incorporating the excessive fines clause of the Eighth Amendment,[141] the Court found that the protection against excessive punitive economic sanctions secured by the Clause satisfies the originalist analysis set forth in *McDonald*.[142] In both *McDonald* and *Timbs*, the Court made historical arguments reaching back to the Magna Carta[143] and Blackstone's Commentaries on the Laws of England[144] to justify that the protections granted by the Second Amendment and the excessive fines clause are both "fundamental to our

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138 *See* McDonald, 561 U.S. at 791 (Alito, J.) ("A provision of the Bill of Rights that protects a right that is fundamental from an American perspective applies equally to the Federal government and the States.").

139 *Id.* at 767.

140 139 S. Ct. 682, 688–91 (2019) (incorporating the Excessive Fines Clause).

141 U.S. CONST. amend. VIII ("Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.").

142 *Timbs*, 139 S. Ct. at 687 (quoting McDonald, 561 U.S., at 767).

143 *See, e.g.*, *id.* at 687 ("The Excessive Fines Clause traces its venerable lineage back to at least 1215, when Magna Carta guaranteed that '[a] Free-man shall not be amerced for a small fault, but after the manner of the fault; and for a great fault after the greatness thereof, saving to him his contenement . . . .'" (internal citations omitted)).

144 *See, e.g.*, McDonald, 561 U.S. at 769 ("Founding-era legal commentators confirmed the importance of the right to early Americans. St. George Tucker, for example, described the right to keep and bear arms as 'the true palladium of liberty' and explained that prohibitions on the right would place liberty 'on the brink of destruction.'" (quoting 1 Blackstone's Commentaries, Editor's App. 300 (S. Tucker ed. 1803))).

scheme of ordered liberty" and "deeply rooted in this Nation's history and tradition."[145] Following the incorporation in *Timbs*, only a handful of jury rights secured federally by the Fifth,[146] Sixth,[147] and Seventh Amendment[148] and protections against the quartering of soldiers[149] remain unincorporated to the states.[150]

Applying this same *McDonald* framework, some legal commentators believe the Seventh Amendment should be incorporated to the states via the Fourteenth Amendment.[151] After all, a civil jury fulfills both prongs of the originalist analysis. A civil jury is "fundamental to our scheme of ordered liberty." Supreme Court jurisprudence suggests that the Seventh Amendment is fundamental[152] and essential to a fair trial.[153]

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145 *Id.* at 764.

146 *See* U.S. CONST. amend. V (securing the right to indictment by a grand jury federally).

147 *See* U.S. CONST. amend. VI (securing the right to unanimous jury).

148 *See* U.S. CONST. amend. VII (securing the right to a jury in civil cases federally)

149 *See* U.S. CONST. amend. III ("No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.").

150 *See* Suja A. Thomas, *What Timbs Does Not Say*, GEO. WASH L. REV. ON THE DOCKET (March 7, 2019), https://www.gwlr.org/what-timbs-does-not-say/ (discounting the nonincorporation of the Third Amendment and noting the reluctance of the Court to incorporate jury rights).

151 *See* Thomas, *supra* note 150 (arguing that while the Seventh Amendment should be incorporated under *Timbs* or *McDonald*, this is unlikely to occur).

152 *See* Robert S. Peck & Erwin Chemerinsky, *The Right to Trial by Jury As A Fundamental and Substantive Right and Other Civil-Trial Constitutional Protections*, 96 OR. L. REV. 489, 557 (2018) (citing to Hodges v. Easton, 106 U.S. 408, 412 (1882); Jacob v. New York City, 315 U.S. 752, 752-53 (1942); Parklane Hosiery Co. v. Shore, 439 U.S. 322, 338 (1979) (Rehnquist, J., dissenting) ("fundamental to our history and jurisprudence")).

153 *See* Peck & Chemerinsky, *supra* note 152, at 557 (citing to Simler v. Conner, 372 U.S. 221, 222 (1963); Byrd v. Blue Ridge Rural Elec. Coop., Inc., 356 U.S. 525, 537-39 (1958)).

A civil jury is also "deeply rooted in this Nation's history and tradition."[154] The right to a jury trial is believed to be devolved from the protections granted in the Magna Carta.[155] The jury was viewed by Blackstone as the "palladium" of English liberties,[156] a view shared by the framers of the Constitution.[157] American colonists embraced the civil jury and it was "as universally established in the colonies as in the mother country."[158] Civil jury right remained strong from the earliest days of the Republic through the adoption of the Fourteenth Amendment.[159] Under modern selective incorporation doctrine, the Seventh Amendment should be incorporated to the states through the Due Process clause of the Fourteenth Amendment.

Despite *McDonald* and *Timbs*, incorporation of the Seventh Amendment does not appear to be imminent—or even on the distant horizon.[160] Because the *McDonald* framework

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154 *Id.*

155 *See* Howard, *supra* note 128, 243–44 (1974) (tracing the early history of civil jury trial by jury in the English common law).

156 *Id.*

157 *See supra* Part III.A for a discussion of the important role of the jury in colonial United States.

158 Peck & Chemerinsky, *supra* note 152, at 557 (quoting 1 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES, § 165 at 117 (Melville M. Bigelow ed., Little, Brown, and Co. 5th ed. 1905) (1833)).

159 *See* Peck & Chemerinsky, *supra* note 152, at 557–68

> [A]t the time the Fourteenth Amendment was ratified, the Constitutions of "[t]hirty-six out of thirty-seven states ... guaranteed the right to jury trials in all civil or common law cases." By comparison, as the Supreme Court noted in McDonald, only "22 of the 37 States in the Union had state constitutional provisions explicitly protecting the right to keep and bear arms."

160 *See* Thomas, *supra* note 150 ("[W]ill the [civil jury] rights be incorporated? It's unlikely. . . . [T]he Court itself pointed out that stare decisis might stand in the way of incorporation of the remaining rights. This signal from the Court may prevent petitions for certiorari from being filed on those issues."); *see also* Andrew Cohen & Suja Thomas, *Is There Any Way to Resuscitate the Seventh Amendment Right to Jury Trial?* BRENNAN CTR. FOR JUST. (Nov. 28, 2022),

has yet to be applied to the Seventh Amendment,[161] the current jurisprudence declines to extend the right to jury trial to claims brought in state courts.[162] The Fourth circuit has specifically held that because the Seventh Amendment has not been incorporated, the appeal bond provision requiring indigent tenants to post appeal bonds to access a circuit court, and thus a civil jury, does not violate Due Process or Equal Protection Clauses of the Fourteenth Amendment.[163] Therefore, looking to the Virginia state constitution and not federal Constitution is the appropriate approach for determining whether a right to civil jury exists for indigent tenants.[164]

D. *Virginia State Constitution Right to Jury Trial in Civil Trials*

The Virginia right to civil jury trial is more expansive facially than the federal right.[165] Yet, the Virginia jurisprudence is very similar to the federal jurisprudence.[166] The general rule is that an action must have had the right to a jury trial in 1776 when the Virginia Constitution was adopted.[167] In applying this jurisprudence, courts have noted that "the right

https://www.brennancenter.org/our-work/analysis-opinion/there-any-way-resuscitate-seventh-amendment-right-jury-trial (discussing the jurisprudence of Justices Kavanaugh, Gorsuch, and Barrett as unsympathetic toward civil jury rights to the same extent as criminal jury rights).

161 *See* Peck & Chemerinsky, *supra* note 152, at 556 (noting [lower] courts have adhered to the result dictated by nineteenth century precedent on Seventh Amendment incorporation and are awaiting a definitive ruling from the Supreme Court that the non-incorporation precedents are overruled while the Supreme Court has explicitly recognized "the Seventh Amendment's civil jury requirement jurisprudence long predate the era of selective incorporation").

162 *See* cases cited *supra* note 136.

163 *See* Letendre v. Fugate, 701 F.2d 1093 (4th Cir. 1983) (seeking a declaratory judgment that Virginia Code § 8.01–129 violated the Fourteenth Amendment).

164 *See infra* Part III.D.

165 *Compare* VA CONST. ART. 1, § 11 *with* U.S. CONST. amend. VII.

166 *See* Howard, *supra* note 128, at 244.

167 *See* REVI, LLC v. Chicago Title Ins. Co., 776 S.E.2d 808, 813 (2015)

to a civil jury provided by the state constitution is equivalent to the federal seventh amendment right."[168]

Whether an action has a right to jury depends on whether that right had been created by statute or whether the action had a common law right the jury in 1776.[169] For the guarantee of a jury trial to attach, the action should bear characteristics of "traditional common law proceedings."[170] This can be evidenced by actions for monetary damages, compensatory or punitive damages, attempts to adjust the rights and liabilities of antagonistic litigants, or requests for retrospective relief.[171] Alternatively, *Ingram v. Commonwealth*[172] suggests that a statute creating a cause of action that appears to be "a novelty of statutory law" that is in-fact based in ancient common law writs may be sufficient to establish a common law right to a jury.[173] Like in federal test, the state court should consider whether a claim is analogous to one that would have been brought in law or equity in 1776, and whether the remedy sought is legal or equitable. If the claim is analogous to a common law claim that existed in 1776, the right to jury attaches.

Article I, Section 11 of the Constitution of Virginia provides "[t]hat in controversies respecting property, and in suits between man and man, trial by jury is preferable to any other, and ought to be held sacred." Yet, the right to a jury trial does not apply "to those proceedings in which there was no right to jury trial when the Constitution was adopted."

168 Boyd v. Bulala, 647 F. Supp. 781, 789 (W.D. Va. 1986).

169 Ingram v. Commonwealth, 741 S.E.2d 62, 68 (Va. Ct. App. 2013).

170 *Id.* at 68.

171 *Id.* at 68–69 (listing the traditional characteristics of common law actions).

172 *Id.*

173 *See id.* (asserting that while the code section in question had facial parallels in ancient common law writs, those parallels had little in common with the actual purpose of the code in question.)

Applicant Details

First Name	**Nicole**
Last Name	**Vanek**
Citizenship Status	**U. S. Citizen**
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Address	**Address** Street **9848 Tall Grass Trail** City **Saint John** State/Territory **Indiana** Zip **46373** Country **United States**
Contact Phone Number	**2197435891**

Applicant Education

BA/BS From	**Indiana University-Bloomington**
Date of BA/BS	**May 2020**
JD/LLB From	**University of Illinois Chicago School of Law** **http://www.jmls.edu**
Date of JD/LLB	**May 12, 2023**
Class Rank	**15%**
Law Review/Journal	**Yes**
Journal(s)	**UIC Law Review**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**

Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Mundy, Hugh
hmundy@uic.edu
Frossard, Margaret
mfrossard@uic.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Nicole M. Vanek
2335 N Lincoln Ave Chicago, IL 60614 | 219-743-5891 | nvanek2@uic.edu

June 9, 2023

The Honorable Juan R. Sanchez
14613 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

Dear Judge Sanchez:

I write to apply for a position as a judicial law clerk in your chambers beginning in the Fall of 2024. I seek to bring to your chambers my experience in the courtroom, strong writing and research skills, and commitment to public service.

Before starting school at UIC Law, I earned a Bachelor of Arts from Indiana University Bloomington with a double major in psychology and criminal justice. In college, I interned at the Monroe County Prosecutor's Office, worked as a part-time tutor, and volunteered with numerous community organizations and philanthropies. This is where I found that I have a passion for helping others, which has led me to pursue a future that will keep me connected to my community.

Throughout law school, I have worked as a legal volunteer with numerous judges and legal agencies around Chicago. During the summer of 2021, I served as a judicial extern for five judges in the Criminal Division of Cook County Circuit Court, where I researched recent statute changes and sentencing for juvenile defendants. In the fall of 2021, I worked with the Cook County State's Attorney's Office's Juvenile Justice Bureau, researching unduly suggestive photo identification spreads and procedures for working with victims who do not speak English as a first language. In the spring of 2022, as an intern in the United States Attorney's Office for the Northern District of Illinois, I worked on a civil case that was among the first of its kind: an employment discrimination lawsuit arising out of an employer's COVID-19 protocols. I also assisted with a variety of criminal matters, including narcotics and violent-crime prosecutions. Over the summer of 2022, I served as an extern for the Honorable James Shadid in the Central District of Illinois, as well as a 711 Law Clerk in the Cook County State's Attorney's Office's Traffic Division, where I was able to gain more hands-on experience doing trial work. In the fall of 2022, I served as an extern for the Honorable John Blakey of the Northern District of Illinois, where I had the opportunity to observe a double jury trial.

Recently, I finished an internship with the United States Department of Justice, Antitrust Division, where I focused on researching fair sentencing practices, breaches of plea agreements, and evidentiary issues. Beginning in August of 2023, I am honored to begin working as a Judicial Clerk with the Honorable Mark J. Dinsmore in the Southern District of Indiana.

Outside of my legal volunteer positions, I was a member of the *UIC Law Review* Editorial Board and the UIC Moot Court Honors Council throughout law school. I also served the President of UIC's Restorative Justice Initiative, which strives to make an impact on surrounding Chicago communities by teaching students from the Boys and Girls Clubs of Chicago about Restorative Justice practices.

I seek to continue my legal career in your chambers and to have the extraordinary opportunity of learning the law from the perspective of the bench. I would be honored to speak with you further about this position. Thank you for your time and consideration.

Sincerely,
Nicole Vanek

Nicole M. Vanek

2335 N Lincoln Ave Chicago, IL 60614 | 219-743-5891 | nvanek2@uic.edu

EDUCATION

University of Illinois Chicago School of Law, Chicago, IL
Juris Doctor, Magna Cum Laude, Concentration in Trial Advocacy and Dispute Resolution, May 2023
GPA: 3.75/4.00 | Rank: 31/233 | Dean's Scholar

- Dean's List: Fall 2020, Spring 2021, Fall 2021, Spring 2022, Fall 2022, Spring 2023
- CALI Award: Contracts II, Spring 2021
- *UIC Law Review* Editorial Board: Lead Articles Editor, March 2022 - May 2023
- UIC Law Moot Court Honors Council Member, Summer 2021 - May 2023
    - Appellate Lawyer's Association Moot Court Competition Fall 2022 Quarter Finalist

Indiana University, Bloomington, IN
Bachelor of Arts in Psychology and Criminal Justice (Double Major), May 2020
GPA: 3.46/4.0 | Minor: Human Resource Management

- Student Hoosier Emerging Leader
- Led Breast Cancer Education and Awareness Philanthropy; raised $178,000 for the cause
- Worked part time tutoring college students and working as a receptionist

INCOMING EMPLOYMENT

United States District Court for the Southern District of Indiana
Judicial Clerk for the Honorable Mark J. Dinsmore, August 2023 - August 2024

RELEVANT EMPLOYMENT EXPERIENCE

United States Department of Justice, Chicago, IL
Legal Intern, Antitrust Division, January 2023 - April 2023

- Conducted research on topics such as fair sentencing, breaches of plea agreements, and evidentiary issues
- Observed office-wide meetings to assist in planning litigation for current and future cases

United States District Court for the Northern District of Illinois, Chicago, IL
Judicial Extern for the Honorable John R. Blakey, September 2022 - December 2022

- Assisted in drafting motions to dismiss on topics including contract disputes and social security disputes
- Observed court proceedings including international depositions and double jury trials

United States District Court for the Central District of Illinois, Peoria, IL
Judicial Extern for the Honorable James E. Shadid, June 2022 - August 2022

- Assisted in drafting motions to dismiss on topics including class actions and First Amendment issues
- Observed motions, depositions, and other litigation, discussing decisions with Judge Shadid and other externs

United States Attorney's Office, Northern District of Illinois, Chicago, IL
711 Law Clerk, January 2022 - May 2022

- Assisted in research, information collection, evidence review, and other tasks requested by AUSAs
- Drafted materials to be used in depositions, motions, and other litigation
- Observed trials, depositions, motions, and other litigation in both civil and criminal federal courtrooms

Cook County State's Attorney's Office, Chicago, IL
711 Law Clerk, Traffic Division, May 2022 - August 2022

- Independently litigated cases on petty offenses and violations in Traffic Court
- Assisted in litigation during in-person trials, motions, and hearings
- Prepared officers and complaining witnesses prior to questioning during litigation

Cook County State's Attorney's Office, Chicago, IL
Intern, Juvenile Justice Bureau, August 2021 - December 2021
- Assisted in research regarding juvenile procedure and sentencing, focusing on unduly suggestive photo lineups
- Ordered discovery, subpoenaed evidence, contacted officers and witnesses for questioning
- Observed motions, negotiations, conferences, and other litigation in front of multiple juvenile judges

Cook County Circuit Court, Criminal Division, Chicago, IL
Judicial Extern for the Honorable Judges Joyce, Kenworthy, Maldonado, Stephenson, and Walsh, May 2021 - August 2021
- Assisted in research specifically surrounding juvenile sentences of life without parole
- Conducted research on House Bill 3653 Safe-T Act; worked to summarize document for court personnel to use
- Observed plea agreements, probation proceedings, bond hearings, motions, bench trials, and other litigation

Monroe County Prosecutor's Office, Bloomington, IN
Intern, September 2019 - December 2019
- Attended to jail calls and watched body cam videos to assist in information collection
- Assisted in jury selection by identifying potential jurors through their social media profiles
- Observed legal proceedings in courts of all types

LEADERSHIP EXPERIENCE
Restorative Justice Initiative, Chicago, IL
Executive Board Treasurer, April 2021 - April 2022
Executive Board President, April 2022 - April 2023
- Organized and ran peace circles for student body and other student organizations
- Volunteered for and worked with organizations throughout Chicago to promote Restorative Justice practices
- Planned events, led meetings, and served as a liaison between the organization and the UIC administration

Student Bar Association, Chicago, IL
1L Class Delegate, September 2020 - April 2021
Executive Board Treasurer, April 2021 - April 2022
3L Class Delegate, September 2022 - April 2023
- Represented the UIC Student Body in organizing and managing SBA fundraisers
- Served as a liaison between the 3L student class, the SBA Executive Board, and UIC administration
- Worked with Executive Board to plan events, meetings, and social gatherings for student body

VOLUNTEER EXPERIENCE
Indiana High School Dance Team Association
Time and Penalty Judge, November 2016 - Present
- Record length of floor and music time, ensuring that dancers do not go over their allotted stage time
- Analyze routines confirming choreography adheres to specified standards
- Interact with middle and high school aged dancers, overseeing their growth as performers

Hoosier Hills Food Bank, Bloomington, IN
Volunteer, August 2019 - March 2020
- Assisted in running multiple food and book drives
- Interacted with community members in caring for those less fortunate

Indiana University Dance Marathon, Bloomington, IN
Fundraising Volunteer, November 2016 - November 2017
- Raised over $4.2 million for Riley Hospital for Children
- Stood for over 24 hours during the event while interacting with Riley patients and other participants

Transcript Data

STUDENT INFORMATION

Name : Nicole M. Vanek
Birth Date: Sep 03, 1997

Curriculum Information

Current Program
College: UIC School of Law
Major and Department: Law, UIC Law

This is NOT an Official Transcript

DEGREE(S) SOUGHT/AWARDED

Sought: Juris Doctor **Degree Date:**

Curriculum Information

Primary Degree
College: UIC School of Law
Major: Law

INSTITUTION CREDIT -Top-

Term: Fall 2020 - Chicago
College: UIC School of Law
Major: Law
Academic Standing: Not Calculated or Unknown
Additional Standing: Deans List

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
JD	401	2L	Exp Learning	A	1.000	4.00	
JD	405	2L	Contracts I	B	3.000	9.00	
JD	406	2L	Property	A	4.000	16.00	
JD	407	2L	Torts	B	4.000	12.00	
LAW	402	2L	LSI	A	3.000	12.00	

Term Totals (Law - Chicago)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	15.000	15.000	15.000	15.000	53.00	3.53
Cumulative:	15.000	15.000	15.000	15.000	53.00	3.53

⚠ This is NOT an Official Transcript.

Term: Spring 2021 - Chicago
College: UIC School of Law
Major: Law
Academic Standing:
Additional Standing: Deans List

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
JD	411	2L	Civil Procedure I	B+	3.000	9.99	
JD	414	2L	Const Law I	A	3.000	12.00	
JD	415	2L	Contracts II	A+	3.000	12.03	
JD	416	2L	Crim Law	A	3.000	12.00	
LAW	412	2L	LSII	A	3.000	12.00	

Term Totals (Law - Chicago)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	15.000	15.000	15.000	15.000	58.02	3.86
Cumulative:	30.000	30.000	30.000	30.000	111.02	3.70

⚠ This is NOT an Official Transcript.

Term: Summer 2021 - Chicago

College: UIC School of Law
Major: Law
Academic Standing: Not Calculated or Unknown

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	422	2L	LSIII	B+	2.000	6.66	
TADR	471	2L	Externship: Judicial Seminar	A+	1.000	4.01	
TADR	474	2L	Externship: Judicial Fieldwork	P	3.000	0.00	

Term Totals (Law - Chicago)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	6.000	6.000	6.000	3.000	10.67	3.55
Cumulative:	36.000	36.000	36.000	33.000	121.69	3.68

⚠ This is NOT an Official Transcript.

Term: Fall 2021 - Chicago

College: UIC School of Law
Major: Law
Academic Standing:
Additional Standing: Deans List

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
JD	421	2L	Civil Procedure II	B-	3.000	8.01	
JD	424	2L	Const Law II	A	3.000	12.00	
TADR	402	2L	Trial Lawyer Ad	A	3.000	12.00	
TADR	457	2L	Trial Lawyer Evidence	A-	4.000	14.68	
TADR	475	2L	Extern: JD Adv	P	1.000	0.00	

Term Totals (Law - Chicago)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	14.000	14.000	14.000	13.000	46.69	3.59
Cumulative:	50.000	50.000	50.000	46.000	168.38	3.66

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Term: Spring 2022 - Chicago

College: UIC School of Law
Major: Law
Academic Standing:

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
JD	423	2L	Prof Responsibility	A+	3.000	12.03	
LAW	533	2L	Bus Assoc	A	3.000	12.00	
LAW	536	2L	Crim Pro: Police Invest	A	3.000	12.00	
LAW	586	2L	Law Review Comment	P	2.000	0.00	
TADR	428	2L	Litig Tech	A	3.000	12.00	

Term Totals (Law - Chicago)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	14.000	14.000	14.000	12.000	48.03	4.00
Cumulative:	64.000	64.000	64.000	58.000	216.41	3.73

⚠ This is NOT an Official Transcript.

Term: Summer 2022 - Chicago

College: UIC School of Law
Major: Law
Academic Standing: Not Calculated or Unknown

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
TADR	460	2L	LSIV Drafting Criminal	A+	2.000	8.02	
TADR	475	2L	Extern: JD Adv	P	1.000	0.00	

Term Totals (Law - Chicago)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	3.000	3.000	3.000	2.000	8.02	4.01
Cumulative:	67.000	67.000	67.000	60.000	224.43	3.74

⚠ This is NOT an Official Transcript.

TRANSCRIPT TOTALS (LAW - CHICAGO) -Top-

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Total Institution:	67.000	67.000	67.000	60.000	224.43	3.74
Total Transfer:	0.000	0.000	0.000	0.000	0.00	0.00
Overall:	67.000	67.000	67.000	60.000	224.43	3.74

⚠ This is NOT an Official Transcript.

Term: Fall 2022 - Chicago

College: UIC School of Law
Major: Law
Academic Standing:
Additional Standing: Deans List

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	460	2L	Family Law	B+	3.000	9.99	
LAW	538	2L	Adv Torts	A-	2.000	7.34	
TADR	426	2L	Counsel and Neg	A	3.000	12.00	
TADR	445	2L	Crim Pro: Adj	A	2.000	8.00	
TADR	476	2L	Extern: Rest Justice Class	A	2.000	8.00	
TADR	477	2L	Extern: Rest Justice	A	1.000	4.00	

Term Totals (Law - Chicago)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	13.000	13.000	13.000	13.000	49.33	3.79
Cumulative:	80.000	80.000	80.000	73.000	273.76	3.75

Term: Spring 2023 - Chicago

College: UIC School of Law
Major: Law
Academic Standing:

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	530	2L	Leg Fund Rev and Test Taking	A-	3.000	11.01	
LAW	531	2L	Bar Essay Writing	A	2.000	8.00	
LAW	532	2L	Writing for Prac Law	A-	3.000	11.01	
TADR	424	2L	Jury Selection	A	2.000	8.00	

Term Totals (Law - Chicago)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	10.000	10.000	10.000	10.000	38.02	3.80
Cumulative:	90.000	90.000	90.000	83.000	311.78	3.75

⚠ This is NOT an Official Transcript.

TRANSCRIPT TOTALS (LAW - CHICAGO) -Top-

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Total Institution:	90.000	90.000	90.000	83.000	311.78	3.75
Total Transfer:	0.000	0.000	0.000	0.000	0.00	0.00
Overall:	90.000	90.000	90.000	83.000	311.78	3.75

⚠ This is NOT an Official Transcript.

June 09, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I write in enthusiastic support of Nicole Vanek's application for federal judicial clerkship. Nicole is bright, inquisitive, collegial, principled, and motivated. Put simply, she is an ideal candidate for a clerkship.

I met Nicole as a first-year student in Lawyering Skills 1 ("LS1"), the objecting writing component of our nationally ranked legal writing program. Throughout the term, Nicole distinguished herself with precise, clear, and thoughtful legal writing. As a central course component, I require my LS1 students to work in collaborative environments. Here, Nicole consistently brought out the best in her classmates and elevated the caliber of our discussions.

During the Fall 2021 and Spring 2022 semesters, I had the pleasure of working with Nicole in Evidence and Criminal Procedure. In both courses, I stress the practical application of material in a courtroom-like setting. To this end, I require to students respond to questions from the standpoint of advocates and provide in detail the basis for their positions. Understandably, not every student performs well in this environment. Nicole, however, was adept at processing complex fact patterns and formulating well-reasoned responses.

Nicole finished in the top five-percent of a Criminal Procedure class of over 90 students. Simply put, her analysis of sophisticated Fourth, Fifth, and Sixth Amendment issues was among the strongest I have read on any exam. During class, Nicole challenged and impressed me with her nuanced questions and answers. Her performance in Evidence was comparably strong.

Finally, Nicole's summer state and federal judicial internships have prepared her for a post-graduate clerkship. In Cook County, Nicole worked with five circuit court judges and participated in both online and in-person court proceedings. In the Central District of Illinois, she is currently conducting research for Judge James Shadid on a variety of civil and criminal matters.

In sum, Nicole is an ideal candidate for a federal clerkship. Her sharp intellect, formidable work ethic, and collegial spirit assure me that she will be as valuable to your chambers as she is to our law school. If you have any questions, please contact me at hmundy@uic.edu or at (312) 427-2737.

Sincerely,

Hugh M. Mundy, Professor of Law
UIC Law School

June 09, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I give Nicole Vanek my highest recommendation for the position of judicial law clerk. I have known Nicole for the past year. She was one of the most outstanding students in my Professional Responsibility class. I have taught as an adjunct professor for the past 40 years and Nicole is one of the most impressive students I have had the honor to teach.

Nicole is self-motivated with a strong work ethic. Her writing and research skills are outstanding. Nicole works well with people and takes instruction well. I believe Nicole will be an excellent judicial law clerk. Please do not hesitate to contact me by phone at (312) 771-0016 or by email at mfrossar@uic.edu if you have any questions.

Thank you for your time and consideration.

Sincerely,

Margaret O'Mara Frossard (Retired Justice Illinois Appellate Court)
Associate Dean for Professionalism & Career Strategy
UIC Law School

Nicole Vanek Writing Sample

The writing sample below is a memorandum written as an assignment during my "Lawyering Skills II" class. The memorandum in opposition to a motion for preliminary injunction discusses a dispute regarding an employment agreement. Intermedical Device Corporation alleges that Dr. Weiss, an old employee, breached the employment agreement by opening a competing organization and recruiting IDC's employees.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

INTERMEDICAL DEVICE CORPORATION, INC.,	)	
Plaintiff,	)	
	)	Case No. 21 C 2776
v.	)	
	)	JUDGE THOMAS GILBERT
	)	MAGISTRATE JUDGE BROWN
HEARTBEAT, INC., a Wisconsin corporation, and	)	
LAWRENCE WEISS, Ph.D., individually and as an officer of Heartbeat Inc., a citizen of Wisconsin,	)	
Defendants.	)	

DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION

Defendants, Heartbeat, Inc. ("Heartbeat") and Dr. Lawrence Weiss ("Dr. Weiss"), by and through their attorneys, and as authorized by Rule 65 of the Federal Rule of Civil Procedure, move this Court to deny a preliminary injunction for Intermedical Device Corporation ("IDC") on the claims set out in its Complaint because the pleadings on file do not satisfy the elements for an injunction and Plaintiff is not entitled to such relief.

In support of this motion, Defendants submit a Memorandum of Law and attached supporting documents, which are incorporated herein by reference.

Respectfully submitted,

Nicole Vanek

Kevin Stay- Atty. No. 1234567
37 East Washington Street
Chicago, IL 60604
(555) 555-555

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

INTERMEDICAL DEVICE CORPORATION, INC., an Illinois Corporation Plaintiff, v. HEARTBEAT, INC., a Wisconsin corporation, and LAWRENCE WEISS, Ph.D., individually and as an officer of Heartbeat Inc., a citizen of Wisconsin, Defendants.	)	Case No. 21 C 2776 JUDGE THOMAS GILBERT MAGISTRATE JUDGE BROWN

DEFENDANTS' MEMORANDUM OF LAW IN OPPOSITION
TO PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION

Defendants, Heartbeat and Dr. Weiss, by and through their attorneys and pursuant to Rule 65 of the Federal Rules of Civil Procedure, and the Local General Rules of the United States District Court for the Northern District of Illinois, ask this Court to deny Plaintiff's motion for an injunction for the reasons set out below.

INTRODUCTION

An injunction would be inappropriate because there has been no breach of any agreement and Intermedical ("IDC" or "Plaintiff") advances an unreasonable and far too restrictive reading of a non-compete agreement. As to Count I, Plaintiff fails to satisfy any of the elements for a preliminary injunction on the breach of contract claim. First, there is no reasonable likelihood of success on the merits because IDC cannot meet the elements of the cause of action. Rather, Plaintiff seeks to bar Dr. Weiss from working in or developing his own company, Heartbeat, even if its research in no way competes with IDC's. Second, irreparable harm does not exist here as Heartbeat is only a small startup company in its early stages and will not have funding or a

laboratory for at least one year. Third, IDC has a perfectly adequate remedy at law for any supposed future breach because Dr. Weiss is not in breach of his contract nor does he intend to compete with IDC. Fourth, the harm suffered by Heartbeat and Dr. Weiss due to an injunction would be much greater than any harm suffered by IDC if the injunction were granted because Dr. Weiss would be rendered jobless after devoting his life to a highly specialized field. Finally, not only would it harm Dr. Weiss and Heartbeat, but also the public because it would allow IDC to corner the market, preserve its monopoly, and profit off of sick patients.

As to Count II, IDC also fails to satisfy the elements necessary for a preliminary injunction on its interference with a contractual relationship claim. As before, there is no reasonable likelihood of success on the merits because Plaintiff is unable to show Dr. Weiss intentionally solicited the employees who were bound by the non-compete agreement. The three former IDC employees who have come to work at Heartbeat came at their own free will. Second, the record contains no evidence of any supposed irreparable harm because Heartbeat will be focusing on products that are not in direct competition with IDC. Third, Plaintiff has a perfectly adequate remedy at law because Dr. Weiss did not breach the covenant he signed in any way. Fourth, the balance of harms weighs in favor of Dr. Weiss because he would be rendered jobless with no means to make a living. Finally, an injunction would be detrimental to the public interest because Dr. Weiss is very knowledgeable and his inability to conduct research would be detrimental to the public. Dr. Weiss did not: (1) breach any covenant he signed while at Intermedical; (2) render any services in competition with Intermedical; (3) solicit any customers; or (4) induce any employees to terminate their employment.

SUMMARY OF THE FACTS

IDC is a corporation organized under the laws of Illinois, with its principal place of business in Chicago. Plaintiff's Complaint for a Preliminary Injunction ("C.") 1. It has existed

since 1949 and develops and markets medical devices for cardiovascular and neurovascular disorders. C. 7. IDC is the world leader in cardiovascular and neurovascular medical device distribution. C. 9. In the 1990's, the company expanded into replacement heart valves and manufacturing products that treat disorders of the cranium and spine. C. 7.

In 1980, IDC hired Dr. Lawrence Weiss as a research scientist. Affidavit of Lawrence Weiss ("Aff. LW.") 3. Prior to working at IDC, Dr. Weiss attended Harvard University and Johns Hopkins University where he earned a Ph.D. in biomedical engineering. Aff. LW. 2. After working as a research scientist for 10 years, Dr. Weiss was promoted to the Director of Research for IDC's Heart Valve Division in 1990, where his responsibilities included educating physicians about the company's devices and overseeing lower-level employees. Aff. LW. 4. Dr. Weiss was also named an Intermedical Heart Society Fellow, an honor given to the top 30 scientists at IDC. *Id*. In 1999, Dr. Weiss became the Senior Director of Research and Development. *Id.* During this time, his work led to the issuance of 15 patents on which he was named either the sole or co-inventor. *Id.* All research scientists at IDC are required to sign a confidentiality and non-disclosure agreement at the outset of employment. C. 10. The agreement states the employee agrees not to "render services to any person or entity (including myself)" or "indirectly engage in conduct or actions in any geographic area in which IDC intends to actively market a product." C. 13. The agreement, if enforced, would bar Dr. Weiss from conducting research in any geographic area IDC markets or intends to market a product in for two years after employment. *Id.*

During his time at IDC, Dr. Weiss developed the prototype of an innovative mechanical heart valve, which offers significant advantages to the current animal heart valve. Aff. LW. 5. The mechanical heart valve can function for far longer periods, does not require anti-rejection drugs, nor is limited to only the most severely ill patients, which the animal heart valve requires.

Id. The mechanical heart valve was ready to send to the FDA for approval and Dr. Weiss completed trials on the prototype and filed the application to begin the human clinical trials. Aff. LW. 6. The FDA requested supplementary data and Dr. Weiss asked on numerous occasions for the IDC contact to provide that information to the FDA. *Id.* His requests were ignored. *Id.*

Dr. Weiss became frustrated that he was being ignored about providing information to the FDA. Aff. LW. 7. Dr. Weiss spoke with Dr. Stevenson who told him it was not worth it to continue with the FDA process for financial reasons. *Id*. Over time, Dr. Weiss realized IDC was more interested in prolonging its monopoly on the animal valve and rejection drug (on which it holds the patent) than proceeding with a cutting-edge technique to improve a patient's quality of life *Id*. On September 12, 2008, Dr. Weiss resigned from IDC and on September 23, 2008, he founded and incorporated Heartbeat. C. 15. It is a corporation organized under the laws of Wisconsin, with its principal place of business in Wisconsin. C. 2. Dr. Weiss is an officer of Heartbeat and a citizen of Wisconsin. C. 3. Heartbeat is in the "white board" phase of development, and it will take roughly one year to have a functioning laboratory. Aff. LW. 9. Heartbeat's plan is to engage in research and development on projects which do not compete with IDC in any way. Aff. LW. 10.

In September 2008, three IDC employees joined Dr. Weiss at Heartbeat, as they wanted to continue to work under him. Aff. LW. 10. Dr. Weiss did not contact any of the employees during their time at IDC, but when the employees contacted Dr. Weiss for employment, he encouraged them to remain at IDC because he could not provide them with the benefits they receive at IDC, as Heartbeat was not fully developed. *Id.* The employees are assisting Dr. Weiss in writing grant proposals, finding a space for a lab, and researching non-competing directions the company could go. *Id.* Additionally, many patients contacted Dr. Weiss after they heard of

his resignation, indicating the strength of their social relationship, built over the course of 25 years. Aff. LW. 11. Dr. Weiss has not solicited or received business from them in any way. *Id.*

Dr. Weiss is one of the top ten most knowledgeable cardiac device scientists in the world. Aff. LW. 11. As a result, Dr. Weiss has great respect in the medical community, and physicians and medical professionals trust the products he makes. *Id.* Dr. Weiss attests, "I was absolutely stunned when I got the letter from the IDC attorneys. Dr. Stevenson had been my mentor for so long, and I thought we had a good relationship. He said, ""You cannot just leave and start your own company."" I asked him why not and assured him I am not violating any of the agreements and constitute no threat to IDC. I explained once more why I had resigned but told him I bore him no ill will, nor had any desire to injure a company I had spent 25 years at. Dr. Stevenson refused to listen, said, ""It's in the hands of the attorneys,"" and hung up." Aff. LW. 12. He went on, "If this injunction were granted, I would be rendered jobless after devoting most of my life to a highly specialized field. As far as I can see, IDC is trying to corner the market by maintaining a monopoly on animal cardiac valves and the anti-rejection drugs they require. I am not working on any competing valve, but I certainly hope that at some point in the future, IDC decides it has maximized the amount of money it can take from its monopoly and turn toward providing the best care possible for patients." Aff. LW. 13. "This company of 30,000 employees and an annual budget of $240 million should not be suing me to protect its monopoly. That is a misuse of our legal system, and I ask this Court to dismiss the lawsuit." Aff. LW. 14.

Dr. Weiss denies IDC's allegations in its motion. Specifically, (1) breaching any covenant he signed while at Intermedical; (2) rendering any services in competition with Intermedical; (3) soliciting any customers; or (4) inducing any employees to terminate their employment. Dr. Weiss has not breached any of the covenants he signed while at IDC nor has he

rendered any services in competition with IDC. Dr. Weiss has not solicited any customers or induced any employees to terminate their employment. For the reasons set out below, Dr. Weiss and Heartbeat oppose that motion.

ARGUMENT

Defendants, Dr. Weiss and Heartbeat, ask this Court to deny Plaintiff's motion for a preliminary injunction because there is no breach of contract or inducement for a breach of contract. Instead, Plaintiff's interpretations of the restrictive covenant at issue are far too broad and unreasonable. A preliminary injunction is appropriate only where the plaintiff shows (1) it is reasonably likely to succeed on the merits of its case; (2) it will suffer irreparable harm; (3) it has no adequate remedy at law; (4) the balance of harms the non-moving party will suffer if the injunction is granted is greater than the harm to the movant; (5) it will not harm the public interest. *Roland Machinery v. Dresser Industries*, 749 F.2d 380, 383 (7th Cir. 1984). The Seventh Circuit has stressed all of these factors must be satisfied before an injunction is granted. *Id*. In addition, courts "must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." *Amoco Production Co. v. Village of Gambell*, 107 S. Ct. 1396, 1402 (1987). In exercising their "sound discretion, courts of equity should pay particular regard for the public interest." *Id.* Here, if a preliminary injunction were granted, Dr. Weiss would effectively be barred from practicing a specialized skill and left with no way to make a living. That would only harm the public interest by preventing lifesaving scientific advancements. All in all, Plaintiff fails to demonstrate each factor required for the issuance of a preliminary injunction, and an injunction is inappropriate as to both counts.

I. No Breach of Contract (Count I)

To begin with, injunctive relief should be denied as to Count I. IDC is unable to show a likelihood of success on the merits, there is no evidence of irreparable harm, an adequate remedy

at law exists, the balance of harms weighs in favor of Dr. Weiss, and the public interest is not served by an injunction. Accordingly, this Court should deny Plaintiff's injunction as to Count I.

A. No Reasonable Likelihood of Success on the Merits

First, there is no reasonable likelihood of success on the merits. The non-compete agreement is unreasonable, does not protect a legitimate business interest, and IDC has not made a good faith effort to avoid litigation. In Illinois, in order for a non-compete agreement to be enforceable, Plaintiff must show the "reasonableness of the time, territory, and activity restrictions." *Turnell v. Centimark Corp.,* 796 F.3d, 656, 664 (7th Cir. 2015). In this case, the non-compete agreement is overly broad and unreasonable. Some of the language is simply unintelligible: "render services to any person or entity (including myself)." C. 13. Other language is ambiguous: "indirectly engage in any of the following conduct or actions in any geographic area in which IDC intends to actively market a product." *Id*. It is impossible for Dr. Weiss or the court to predict where IDC will intend to do business two years from now. Worse, IDC seeks to bar him from work anywhere in the world for two years: "in any geographic area." *Id*. Additionally, the court looks to whether a restrictive covenant "deprives the public of the industry of the promisor and deprives the promisor of the opportunity to pursue an occupation and thereby support his or her family." *Reliable Fire Equipment Company v. Arredondo*, 956 N.E.2nd 393, 396 (2011). In its complaint, IDC defines itself as the "world leader in cardiovascular and neurovascular medical device distribution." C. 9. IDC's covenant is unreasonable because it would prevent Dr. Weiss from researching or engaging in any medical technology development for two years anywhere-- no matter how far removed from IDC. It would force him not only to leave the country, but indeed the entire planet. Such a total ban on employment is simply unreasonable. In effect, IDC asks this Court to enforce a monopoly. If the restrictive covenant is so "overbroad that they indicate an intent to oppress the employee and/or

to foster a monopoly, a court of equity may refuse to enforce the covenant." *Turnell.,* 796 F.3d at 658. This covenant is unreasonable and far too restrictive and therefore, there is no reason to bar him from contributing life-saving devices in areas that are not competing with IDC.

Moreover, IDC's overly broad interpretation of the agreements do not protect any legitimate business interest. Such an interest exists only where: "(1) because of the nature of the business, the customers' relationships with the employer are near permanent and the employee would not have had contact with the customers absent the employee's employment; and (2) the employee gained confidential information through his employment that he attempted to use for his own benefit." *Office Mates 5, N. Shore, Inc v. Hazen*, 599 N.E.2d 1072, 1080 (Ill. 1992). Neither situation exists here. There is no evidence Dr. Weiss has had any contact with IDC customers, other than socially. Aff. LW. 11. After 25 years with the company, it is inevitable he has built social relationships with customers, but he has not solicited or received business from them in any way. *Id.* As Dr. Weiss explains, "I told them I have many interests which I was not able to pursue at IDC, and they have wished me well." *Id.* He has not "disparaged the company or done anything to harm its ongoing relationship with clients." *Id.*

Moreover, IDC knows full well he does not intend to compete. He attests when he received the demand letter, he asked Dr. Stevenson, "Why he would send me that letter and not simply pick up the phone and ask me any questions he had." Aff. LW. 12. According to Dr. Weiss, "I assured him I am not violating any of the agreements and constitute no threat to IDC. I explained once more why I had resigned but told him I bore him no ill will nor had any desire to injure a company I had spent 25 years at. Dr. Stevenson refused to listen, and said, ""It's in the hands of the attorneys."" *Id.* That is not a good faith effort on the part of IDC to resolve this matter or avoid litigation. As Dr. Weiss explains, "If this injunction were granted, I would be

rendered jobless after devoting my life to a highly specialized field. . . As far as I can see, IDC is trying to corner the market by maintaining a monopoly. . . This company of 30,000 employees and a budget of $240 million should not be suing me to protect it." Aff. LW. 14.

Additionally, Illinois disfavors non-compete agreements. In 2016, Governor Rauner signed into a law the Illinois Freedom to Work Act, which expressly prohibits private sector employers from entering into any covenant not to compete with a variety of employees. 820 ILCS 90/10(a)(b). Even where a covenant is not barred, it is still disfavored. *Id.* On the record here, given the lack of competent evidence of any breach of contract or resulting injury, IDC cannot show any reasonable likelihood of success on the merits of its breach of contract claim.

B. No Irreparable Harm

Next, IDC cannot show irreparable harm. Irreparable harm means Plaintiff "is unlikely to be made whole by an award of damages or other relief at the end of the trial." *Farnam v. Walker*, 593 F.Supp.2nd 1000, 1001 (C.D. Ill. 2009). It may not "obtain a preliminary injunction by speculating about hypothetical future injuries." *Michigan v. United States Army Corps of Engineers*, 667 F.3d 765, 788 (7th Cir. 2011). Heartbeat is a fledgling local company of four employees, with no functioning laboratory, and has taken no steps toward competing with IDC, an international corporation with over 30,000 employees. Aff. LW. 9. IDC cannot use speculative future damages to show irreparable harm. In sum, IDC would suffer no irreparable harm in the absence of an injunction, and Plaintiff fails to show this requirement.

C. Adequate Remedy at Law

Third, Plaintiff has an adequate remedy at law for any supposed future breach. A moving party has an adequate remedy at law when it will not suffer irreparable harm if denied equitable relief. *Morales v. Trans World Airlines, Inc*., et al., 112 S.Ct. 2031, 2035 (1992). Illinois courts have held "money damages are typically the correct form of damages in a breach of contract

case." *Seaga Mfg., Inc. v. Intermatic Mfg., Ltd.,* No. 13 C 50041, 2013 WL 773037, at ¶15 (N.D. Ill. Feb. 28, 2013). In the case at bar, Plaintiff does not request monetary damages, but is seeking performance of the contract based on its interpretation of it. Even if Plaintiff requested money damages, Illinois courts disfavor injunctive relief "where the gravamen of a complaint is breach of contract and the trial court could award damages if it found a breach occurred." *Id.* Plaintiff is also required to show "loss is of the "immediate" and "substantial" nature necessary to justify" a preliminary injunction. *Id.* ¶ 16. The plaintiff cannot do that here. There is no evidence to suggest the harm IDC alleges would occur within the first six months of Heartbeat's initial formation and brainstorming. Aff. LW. 11. Therefore, Plaintiff has an adequate remedy at law for any supposed future breach.

D. Balance of Harms Favoring Dr. Weiss and Heartbeat

Fourth, the harm suffered by Heartbeat and Dr. Weiss due to an injunction would be much greater than any harm suffered by Plaintiff. The court must "weigh that harm against any irreparable harm the defendant can show he will suffer if the injunction is granted." *Roland,* 749 F.2d at 387. If Dr. Weiss was forced to wait for two years to engage in any sort of research, he would be rendered jobless with no way to make a living. Aff. LW. 13. There is no evidence to show Dr. Weiss breached any part of the contract he signed, and therefore, based on the evidence or lack thereof, the balance of harms weighs in favor of Dr. Weiss.

E. Public Interest Harmed by Injunction

Finally, an injunction would prevent one of the greatest biomedical engineering minds in the world from continuing to improve the lives of the public. As a matter of public interest, Illinois courts have heavily scrutinized non-compete agreements out of concern that they are unenforceable and unlawful restrictions on trade. *Cambridge Engineering Inc., v. Mercury Partners 90 Bi, Inc.,* 879 N.E.2nd 512, 522 (Ill.App.3d 2007). It would be damaging to the

public and to Dr. Weiss to bar Dr. Weiss from engaging in research that does not compete with IDC.

Overall, IDC fails to establish any of the requirements for a preliminary injunction on the breach of contract claim. There has been no breach of any agreement and Plaintiff advances an unreasonable and far too restrictive reading of a non-compete agreement. Therefore, an injunction is inappropriate as to Count I.

II. No Interference with a Contractual Relationship (Count II)

As to Count II, IDC fails to satisfy all the elements necessary for a preliminary injunction on their interference with a contractual relationship claim. As before, Plaintiff cannot show a reasonable likelihood of success on the merits, there is no evidence of irreparable harm, an adequate remedy at law exists, the balance of harms favors Heartbeat and Dr. Weiss, and the public interest is not served by an injunction. In sum, Plaintiff does not satisfy any of the requirements for a preliminary injunction as to Count II.

A. No Reasonable Likelihood of Success on the Merits

As to Count II, Plaintiff fails to show a reasonable likelihood of success on the merits. For an intentional interference with a contractual relationship claim, Plaintiff bears the burden of showing all five elements of the tort which are: "(1) the existence of a valid and enforceable contract between the plaintiff and another; (2) the defendant's awareness of this contractual relation; (3) the defendant's intentional and unjustified inducement of a breach of the contract; (4) a subsequent breach by the other, caused by the defendant's wrongful conduct; and (5) damages." *Simmons v. Campion*, 991 N.E.2d 924, 930 (2013). Additionally, "in order to set forth a claim for fraudulent inducement, Plaintiff must allege: "(1) a false statement of material fact; (2) known or believed to be false by the person making it; (3) or intent to induce the other party to act; (4) action taken by the other party in reliance on the truth of the statement; and (5)

damages to the other party resulting from such reliance." *Havoco of America, Ltd. v. Sumitomo Corp. of America,* 971 F.2d 1332, 1341 (7th Cir. 1992). In this case, there is no evidence of any solicitation or inducement by Dr. Weiss. Nor is there evidence of any breach on the employees' parts. Initially Dr. Weiss worked alone. Aff. LW. 10. One by one three former colleagues called him. *Id*. He asserts, "They said they missed working with me and wondered if they could join me. I encouraged them to stay at IDC, however, they insisted on coming to be a part of Heartbeat. They are helping me with writing grant proposals, finding space for a lab, and researching non-competing directions our company could go." *Id*. The overly restrictive covenant prohibits Dr. Weiss from employing scientists to assist in setting up his lab, as well as maintaining social relationships with his old co-workers and clients. In sum, the restrictive covenant is not enforceable and thus there is no reasonable likelihood of success on the merits.

B. No Irreparable Harm

In addition, Plaintiff must prove it will suffer irreparable harm from the denial of an injunction. Plaintiff "must show such harm is "likely," not just "possible."" *PrimeSource Bldg. Prods. v. Huttig Bldg. Prods.*, No. 16 CV 11390, 2017 U.S. Dist. LEXIS 202748, at 34 (N.D. Ill. Dec. 9, 2017). There is no evidence that supposed irreparable harm will arise from the first six months of Heartbeat's initial formation and brainstorming. A company of 30,000 employees will not suffer irreparable harm from losing 3 employees, who left at their own will. Aff. LW. 14. Plaintiff has no basis to bar Dr. Weiss or anyone else from creating a separate non-competing business entity before speculative damage is even possible. Dr. Weiss did not intentionally induce or solicit employees. Aff. LW. 10. There is nothing to suggest the three former IDC employees who have now come to work at Heartbeat have done so out of anything but shared passion to make new advancements in biomedical engineering. *Id.* Therefore, Plaintiff fails to show an intentional interference with a contract resulting in irreparable harm.

C. Adequate Remedy at Law

Third, there is an adequate remedy of law in existence. There is no claim of misuse of any trade secrets or patent infringement. IDC has not made any claim under the Illinois Trade Secrets Act. 765 ILCS 1065/2. Instead, the evidence here shows Dr. Weiss does not even have a functioning office, as it will take roughly a year to develop a lab. Aff. LW. 9. Rather, Heartbeat is in the early "whiteboard" phase of development. *Id.* In addition, Dr. Weiss intends to engage in research and development on products other than cardiovascular technology, which do not compete with IDC. Aff. LW. 10. Dr. Weiss attests "I have a variety of ideas in mind of projects I never got to work on at IDC and look forward to moving into some entirely new areas." *Id.*

Additionally, any information Dr. Weiss possibly has access to has been published in the patents which are now public information, accessible by a simple internet search. According to Illinois courts, provisions such as these are "not reasonable when the information in question is available to large numbers of the public." *ExactLogix, Inc. v. JobProgress*, *LLC*, No. 3:18-cv-50213, 2020 U.S. Dist. LEXIS 239651, at 51 (N.D. Ill. Dec. 21, 2020). Dr. Weiss has no plans to use the information in any way, and plaintiff has no evidence of a violation of law. Dr. Weiss has not obtained trade secrets or confidential information in any fashion. There is adequate remedy of law because IDC's claim has no factual basis.

D. Balance of Harms Favoring Heartbeat and Dr. Weiss

The balance of harms also favors Dr. Weiss. IDC cannot use its vastly disproportionate size or capital strength to eliminate any perceived threat to its monopoly domination. IDC is trying to corner the animal heart valve market by attempting to bar Dr. Weiss from working with other scientists on non-competing products based on their speculative claims. The supposed harm must "be "certainly impending" to constitute injury and allegations of possible future injury are not sufficient." *Clapper v. Amnesty International USA et al*., 133 S.Ct. 1138, 1141

(2013). IDC has no legal basis to block at will employees from moving on to better work settings. Dr. Weiss and the other scientists have dedicated their lives to mastering research and development of medical devices to help save lives and if the injunction were granted, Dr. Weiss and the former employees would lose their careers. Aff. LW. 13. The small-scale research office can cause little to no harm to such a global, market dominating corporation. Aff. LW. 14. IDC's supposed harms are merely speculative. Based on the evidence, the balance of harms weighs heavily in favor of Dr. Weiss and the three former IDC employees.

E. Public Interest Harmed if Preliminary Injunction is Granted

Finally, an injunction would be detrimental to the public interest because it would prevent a robust array of visionaries committed to healing and promoting the health of society from doing so. In using "their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). IDC intends to use their monopoly to prevent talented scientists, like Dr. Weiss, from benefitting the lives of the public, even if his research will not compete with it. Aff. LW. 14. Heartbeat has only hired at will employees and Dr. Weiss has not solicited any of IDC's clients, only responded to their phone calls to maintain their social relationships. Aff. LW. 11. IDC is attempting to prevent innovation in the field because they want to expand their own monopoly to profit off of its sick patients. Aff. LW. 13. A preliminary injunction would not only harm public interest, but Dr. Weiss and Heartbeat as well.

In sum, IDC fails to establish any of the requirements for a preliminary injunction on the intentional interference with a contractual relationship claim. There has been no breach of any agreement and Plaintiff is stifling the innovation of products that could save the lives of patients. Therefore, Plaintiff does not satisfy any of the elements for injunctive relief on Counts I and II and is not entitled to a preliminary injunction as a matter of law.

CONCLUSION

For the reasons stated above, Plaintiff fails to satisfy all the elements for a preliminary injunction as to its claims in Counts I and II. Based on the record in this case, a preliminary injunction is both inappropriate and unnecessary.

WHEREFORE, Defendants respectfully ask this Court to deny Plaintiff's motion for a preliminary injunction and grant it such other relief as is just and proper.

Respectfully submitted,

Nicole Vanek

Kevin Stay- Atty. No. 1234567
37 East Washington Street
Chicago, IL 60604
(555) 555-5555

Applicant Details

First Name	**Tatiana**
Last Name	**Varanko**
Citizenship Status	**U. S. Citizen**
Email Address	**tatiana.varanko@gmail.com**
Address	**Address** **Street** **4130 Garrett Road, Apartment 731** **City** **Durham** **State/Territory** **North Carolina** **Zip** **27707** **Country** **United States**
Contact Phone Number	**203-721-0040**

Applicant Education

BA/BS From	**George Washington University**
Date of BA/BS	**May 2018**
JD/LLB From	**Duke University School of Law** **https://law.duke.edu/career/**
Date of JD/LLB	**May 12, 2024**
LLM From	**Duke University School of Law**
Date of LLM	**May 12, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Duke Journal of Comparative & International Law**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**No**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Buell, Sam
buell@law.duke.edu
919-613-7193

Dunlap, Charles
dunlap@law.duke.edu
919-613-7233

Helfer, Larry
Helfer@law.duke.edu
919-613-8573

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Tatiana Varanko
4130 Garrett Road
Apartment 731
Durham, NC 27707

June 12, 2023

The Honorable Juan R. Sánchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Chief Judge Sánchez:

I am writing to express my interest in a clerkship position for the 2024-25 term or any term thereafter. I am a rising third-year law student at Duke Law School. I expect to receive my J.D. and LL.M. in International and Comparative Law in May of 2024 and will be available to clerk any time after that date.

Through my experiences before and during law school, I gained the legal research, writing, communication, and time management skills necessary to be an effective clerk. Before law school, I served as the Program Specialist for the Federal Judicial Center's International Judicial Relations Office. In this position, I worked with judges and legal professionals from the U.S. and around the world to plan and execute judicial education exchanges and technical assistance projects. I also researched, wrote, and edited content for a microsite aimed at familiarizing U.S. judges with civil and hybrid law jurisdictions. Last summer, I continued to develop my analytical skills at the Constitutional Court of Hungary.

Currently, I serve as a research assistant to Professor Laurence R. Helfer, an Article Editor for the *Duke Journal of Comparative and International Law*, and a student fellow for the Bolch Judicial Institute's *Judicature* publication. In these roles, I have conducted research, written memoranda on discrete issues, and provided editorial support. This summer, my work for Professor Helfer includes supporting his work as a member of the U.N. Human Rights Committee, reviewing State party reports. Additionally, as a teaching assistant for my school's international LL.M. writing course, I prepared the sample research memorandum for the Fall 2022 semester and taught more than 80 students how to use the Bluebook citation style.

Enclosed are copies of my resume, transcripts, writing sample, and letters of recommendation from Professor Laurence R. Helfer, Professor Samuel W. Buell, and General Charles J. Dunlap, Jr. Please contact me if you need any additional information. Thank you for your consideration.

Sincerely,
Tatiana Varanko

TATIANA VARANKO

4130 Garrett Road, Apartment 731, Durham, NC 27707
tatiana.varanko@duke.edu | (203) 721-0040

EDUCATION

Duke University School of Law, Durham, NC
Juris Doctor/Master of Laws (LLM) in International and Comparative Law expected, May 2024

GPA:	3.67
Summer Institute:	Duke-Leiden Institute in Global and Transnational Law, The Hague, Netherlands
Activities:	Duke Journal of Comparative and International Law, *Articles Editor*
	Duke Law Innocence Project, *Active Investigations Team Lead*
	Duke Afghan Asylum Project, *Student Volunteer*, Spring 2022
Academic-Year Work:	Bolch Judicial Institute/Judicature, *Student Fellow* (international rule of law)
	Professor Laurence R. Helfer, *Research Assistant* (international law & human rights)
	Professor Rima Idzelis, *Teaching Assistant* (LLM legal analysis, research & writing)

The George Washington University, Washington, DC
Bachelor of Arts in International Affairs (Concentration: Conflict Resolution), Minor in French Language, Literature & Culture, *cum laude*, May 2018

GPA:	3.55
Study Abroad:	IES Abroad, Rabat, Morocco, Spring 2017
Academic-Year Work:	National Archives and Records Administration, *Archival Aide*, 2016 –2018
	GWU Office of Alumni Relations, *Colonial Connections Caller*, 2015 –2016
	Office of Congresswoman Elizabeth Esty (D-CT), *Intern*, Fall 2015
	Peace Corps Office of Diversity and National Outreach, *Intern,* Spring 2015

EXPERIENCE

Shearman & Sterling, New York, NY
Summer Associate, May 2023 – July 2023

- Rotating through Litigation and Compensation, Governance, and ERISA practice groups.
- Working on a pro bono internal investigation related to the sexual abuse of a minor.
- Working on a pro bono project related to post-conflict justice in Ukraine.

Constitutional Court of Hungary, Budapest, Hungary
Legal Intern, Presidential Cabinet, May 2022 – June 2022

- Wrote summaries of fundamental rights cases from constitutional courts in Central Europe for a forthcoming inter-constitutional court database.
- Analyzed cases where the Hungarian Constitutional Court referenced European or international law to create a proposal for a subject-area-specific section of the inter-constitutional court database.

Federal Judicial Center, Washington, DC
Program Specialist, International Judicial Relations Office, January 2019 – August 2021

- Worked closely with IJRO Director (Mira Gur-Arie) and US judges on judicial education exchanges.
- Collaborated with US government agencies, international institutions, and partner judiciaries to implement international technical assistance projects.
- Oversaw fellowship program for foreign judges and lawyers researching areas of law or judicial practice relevant to reforms underway in their home countries and provided research support.
- Researched international rule of law and transnational litigation for web-based resources.
- Drafted all IJRO reports to the Judicial Conference and FJC Board.
- Managed ambassador and foreign representative visits for Justice Ruth Bader Ginsburg lying in repose at the Supreme Court of the United States.

Society of Industrial and Office Realtors, Washington, DC
Membership Coordinator, June 2018 – January 2019

- Provided guidance and resources to over 3,200 members across 36 countries.
- Drafted Member News and Chapter News content for the association's quarterly magazine.

ADDITIONAL INFORMATION

Worked two summers as a school custodian. Enjoys Orangetheory, collecting records, and learning Arabic.

TATIANA VARANKO
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UNOFFICIAL TRANSCRIPT
DUKE UNIVERSITY SCHOOL OF LAW

2021 FALL TERM

COURSE TITLE	PROFESSOR	GRADE	CREDITS
Contracts	Haagen, P.	4.0	4.50
Civil Procedure	Miller, D.	3.4	4.50
Torts	Coleman, D.	3.3	4.50
Legal Analysis, Research, Writing	Rich, R.	*Credit Only*	0.00

2022 WINTERSESSION

COURSE TITLE	PROFESSOR	GRADE	CREDITS
Legal and Policy Aspects of Civil-Military Relations	Dunlap, C.	*Credit Only*	0.50
Life or Death: The Decision-Making Process in a Death Penalty Case	McAuliffe, M.	*Credit Only*	0.50

2022 SPRING TERM

COURSE TITLE	PROFESSOR	GRADE	CREDITS
International Law	Helfer, L.	4.0	3.00
Legal Analysis, Research, Writing	Rich, R.	4.0	4.00
International Research Methods	McArthur, M.	3.6	1.00
Criminal Law	Beale, S.	3.3	4.50
Constitutional Law	Blocher, J.	3.2	4.50

2022 DUKE-LEIDEN INSTITUTE IN GLOBAL AND TRANSNATIONAL LAW

COURSE TITLE	PROFESSOR	GRADE	CREDITS
Authority and Legitimacy in International Adjudication	Helfer, L. and Stahn, C.	3.8	2.00
Realizing Rights: Strategic Human Rights Litigation and Advocacy	Duffy, H. and Huckerby, J.	3.8	2.00
Comparative Perspectives on Criminal Justice: Central Issues and Contextual Implementation	Coleman, J. and Ölcer, P.	3.5	2.00

2022 FALL TERM

COURSE TITLE	PROFESSOR	GRADE	CREDITS
Corporate Crime	Buell, S.	4.00	4.00
Use of Force in International Law: Cyber, Drones, Hostage Rescues, Piracy, and More	Dunlap, C.	3.90	2.00
Comparative Law	Qiao, S.	3.80	3.00
Human Rights Advocacy	Huckerby, J.	3.70	2.00
Property Law	Foster, A.	3.60	4.00

2023 WINTERSESSION

COURSE TITLE	PROFESSOR	GRADE	CREDITS
Deposition Practice	Farel, L.	*Credit Only*	0.50
Leadership and Communication in the Law	Gentry, P. and Gilley, E.	*Credit Only*	0.50

2023 SPRING TERM

COURSE TITLE	PROFESSOR	GRADE	CREDITS
Business Associations	de Fontenay, E.	4.00	4.00
Investigating and Prosecuting National Security Cases	Stansbury, S.	3.90	2.00
Comparative Constitutional Design	Knight, J.	3.80	2.00
Ethics & the Law of Lawyering	Richardson, A.	3.70	2.00
Criminal Procedure: Adjudication	Dever, J.	3.60	3.00
Evidence	Stansbury, S.	3.30	3.00
Race and the Law	Jones, T.	*Credit Only*	1.00

TOTAL CREDITS: 70.50
CUMULATIVE GPA: 3.67

Duke University School of Law
210 Science Drive
Durham, NC 27708

June 12, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Re: Tatiana Varanko

Dear Judge Sanchez:

I write to recommend Tatiana Varanko for the position of law clerk in your chambers. I do so with exceedingly strong enthusiasm.

Tatiana was my student in Corporate Crime, a demanding large course in the fall of 2022. I have come to know Tatiana from her participation in the course, meetings outside of class, including to discuss career and clerkship plans, and my review of her written work.

Tatiana's grade of 4.0 in my course was truly outstanding. Her exam paper consisted of twelve pages of writing produced in an eight-hour take-home that required covering four problems with multiple legal issues. Tatiana earned a score that tied three others, out of 43 students, for the best work in the class, in an anonymous grading process. The four-credit Corporate Crime course is rigorous and advanced, routinely attracting a cohort of the sharpest and most ambitious students in the Law School. (The course materials, which are published for free download, or bound at cost, can be seen at buelloncorporatecrime.com; the students are required to read and study almost every page of the two volumes.) Substantively, the course requires students to comprehend a broad range of topics that are challenging and unfamiliar for those who are, as Tatiana was, in only the third semester of law school: federal criminal law, constitutional criminal procedure, securities regulation, corporate law, evidence, and regulation of the legal profession.

Tatiana's paper was at the top of a group that included many of Duke Law's best performers in the second- and third-year classes. In my estimation, this showing, among an ambitious collection of some of the nation's best law students, is very strong evidence of Tatiana's promise for a career as an exceptional attorney at a national level of practice.

Tatiana is a fluent and skilled writer for her stage of education and is improving in that facility all the time. She has displayed these skills in multiple settings across her work at Duke, including as a student in the legal writing program and as a major participant in our Innocence Project and our Bolch Judicial Institute. Tatiana is seeking a clerkship in large part to continue to develop her abilities to stand out on paper and orally as a future litigation attorney who has a deep and demonstrated interest in courts. Tatiana's experiences as a full-time employee at the FJC prior to law school, her work in Hungary and the Netherlands, and her exceptional devotion to a variety of extracurricular projects at Duke are proof positive of her suitability for a demanding, full-time position in federal chambers.

Tatiana is a humble person, a "first generation" lawyer who demands a great deal of herself. One can see this in all she has done to this early stage in her life, from working as a school custodian while in college, to establishing herself as an important staffer at the FJC, to becoming integral to several programs at Duke. Even as one who came to law without prior conceptions about the field's content or culture, Tatiana is forging an independent path for herself that arises naturally from her genuine interests in and commitment to justice and international affairs. In the classroom, she is a careful listener more than one who seeks to control discussion. In the office, she is at ease in presenting herself. Tatiana will continue to grow rapidly as a lawyer and person. I see a high ceiling for her, especially with more of the mentoring she has been so astute and effective in seeking out since her undergraduate days. Whoever Tatiana clerks for, I expect the experience will lead to a career-long and deeply rewarding relationship for both her and the judge.

Having spent ten years in the federal courts before teaching, as a law clerk and as a prosecutor in several districts and circuits, and having taught and mentored thousands of law students, I am confident in predicting that Tatiana Varanko would be an excellent hire for any judge with a demanding docket and chambers that highly values professionalism and collaboration. I am happy to assist you further in any way with your evaluation of her application.

Sincerely yours,

Samuel W. Buell
Bernard M. Fishman Professor of Law

Sam Buell - buell@law.duke.edu - 919-613-7193

Duke University School of Law
210 Science Drive
Durham, NC 27708

June 12, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Re: Tatiana Varanko

Dear Judge Sanchez:

I am writing to strongly endorse the application of Ms. Tatiana Varanko to be your law clerk. Tatiana is a student here at Duke University School of Law, and I got to know her especially well when she took my *Use of Force in International Law* class last fall.

By way of information, I am a Professor of the Practice and Director of the Center on Law, Ethics and National Security at Duke Law School. Prior to retiring from the military in June of 2010, I served as the Air Force's deputy judge advocate general with responsibility for assisting in the supervision of more than 2,550 full and part-time attorneys.

Tatiana is a wonderful student: prepared, courteous to others, and a hard worker. She is also very articulate and able to 'think on her feet.'

Tatiana wrote a superb paper for my *Use of Force* class, "Assessing the Viability of the Use of Force to Respond to Climate Rogue States and Criminal Justice Alternatives." Her writing shows her to be a skilled researcher who can analyze complex issues, and then craft a clearly expressed legal analysis. She is definitely a standout among her peers, as is evidenced by her selection as the Articles Editor of Duke's prestigious *Journal of Comparative & International Law*.

Beyond her considerable professional talents, Tatiana is a very likeable and thoughtful young lawyer-to-be. I'll bet she'll be a very popular colleague in your chambers. Importantly, everything I know about Tatiana shows her to be a person of unquestioned integrity with very strong ethical values.

I am certain that you would be extremely pleased to have Tatiana as your law clerk. I'm more than happy to discuss this with you at your convenience.

Sincerely yours,

Charles J. Dunlap, Jr.
Major General, USAF (Ret.)
Professor of the Practice of Law
Executive Director, Center on Law,
Ethics and National Security

Charles Dunlap - dunlap@law.duke.edu - 919-613-7233

Duke University School of Law
210 Science Drive
Durham, NC 27708

June 12, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Re: Tatiana Varanko

Dear Judge Sanchez:

I write this very enthusiastic letter of recommendation on behalf of Tatiana Varanko, a member of the Duke University Law School JD-LLM class of 2024, who has applied for a clerkship in your chambers.

I have come to know Tatiana quite well at Duke Law, both as a student in two of my courses and as one of my research assistants. Tatiana, who also serves as an Articles Editor of the Duke Journal of International and Comparative Law, is a very bright and articulate student who is deeply curious about the law and legal institutions and who writes clear and cogent prose. She is also conscientious, respectful, and a pleasure to work with.

I first met Tatiana in the Spring of 2022. As a student in Duke Law's distinctive JD-LLM program in international and comparative law, Tatiana enrolled in International Law as a required first-year course. International Law considers a broad range of issues relating to the rules that govern the relations between nation states and between governments and private parties. The key skills that the course emphasizes include understanding the relationship among the actors, norms, and institutions of the international legal system as well as detailed analyses of treaty texts, domestic statutes, the resolutions of intergovernmental organizations, and the decisions of international tribunals and domestic courts.

Tatiana made sustained, high-quality contributions to class discussions throughout the semester. She received a final grade of 4.0 in International Law, placing her in the top 10% of a class of 48 students. Tatiana's final exam answer was excellent. She correctly identified the key legal issues, effectively marshalled the facts and evidence required to analyze them and explained her reasoning in clear and cogent prose. Her answer is especially noteworthy given that she was competing against several upper-level JD and foreign LLM students, as well as her first year classmates.

Tatiana also enrolled in "Authority and Legitimacy in International Adjudication," which I co-taught in July 2022 as part of the Duke-Leiden Institute in Global and Transnational Law, which is held in The Hague in the Netherlands. This seminar analyzes and compares international courts in different areas, including economic integration, trade, human rights, and criminal law. Students review the doctrines developed by these international judicial bodies, consider the legal and political challenges that they have confronted, and the assess the extent to which they have succeeded in overcoming these challenges. Tatiana received a final grade of 3.8, tied for the third highest grade in a class of 16 students from Duke Law School and from universities in Europe and Asia.

Tatiana's excellent academic performance extends well beyond international law. She has received top grades in courses as varied as Business Associations, Corporate Crime, and Investigating and Prosecuting National Security Cases. Although Duke Law does not rank students, her cumulative GPA of 3.67 suggests that she is within the top 10% of her class.

Based on Tatiana's strong academic performance, I invited her to work for me as a research assistant. She has help me with various projects relating to the dispute settlement mechanisms created by social media companies such as Facebook and Google for challenging the removal of online content. In 2022, for example, the European Union adopted a new regulation, the Digital Services Act, that requires internet platforms to provide such mechanisms to their users. Most recently, she has assisted me in preparing for the UN Human Rights Committee's review of several reports by States parties to the International Covenant on Civil and Political Rights, a multilateral treaty to which the United States is also a party.

For each of these research assignments, Tatiana identified a comprehensive list of relevant (and often difficult to find) sources and prepared clear and concise analytical memos setting forth her findings. I have been very satisfied with her research and writing abilities and her attention to detail. I have also been impressed by her work ethic and professional and enthusiastic attitude.

Tatiana has also had an interesting professional experience relevant to a clerkship. In May and June 2022, she served as a legal intern with the Constitutional Court of Hungary. Tatiana summarized individual rights decisions from other constitutional courts in Central and Eastern Europe and analyzed cases where the Hungarian Constitutional Court referenced foreign and international law.

Larry Helfer - Helfer@law.duke.edu - 919-613-8573

In sum, based on my many interactions with Tatiana both inside and outside of the classroom, I am confident of her ability to handle the diverse responsibilities of a judicial law clerk. If there is any additional information that I can provide to convince you to hire her, please feel free to contact me at helfer@law.duke.edu or 919-613-8573.

Sincerely yours,

Laurence R. Helfer
Harry R. Chadwick, Sr. Professor of Law

TATIANA VARANKO
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tatiana.varanko@duke.edu | (203) 721-0040

WRITING SAMPLE

I wrote this appellate brief for my Legal Analysis, Research, and Writing course at Duke University School of Law in the spring of 2022. The assignment was to address the meaning of the phrase "foreign or international tribunal" in 28 U.S.C. § 1782. Writing for the Respondents-Appellees, I argued that the phrase does not cover private arbitration.

The cover page, table of contents, and table of authorities have been omitted for length.

STATEMENT OF THE ISSUE

28 U.S.C. § 1782 authorizes U.S. district courts to compel individuals in their jurisdiction to provide discovery for proceedings before a "foreign or international tribunal" upon request from that tribunal or interested persons. Does the phrase "foreign or international tribunal" in 28 U.S.C. § 1782(a) include private arbitration such that foreign parties can request discovery from U.S. citizens for use in private arbitral proceedings abroad?

STATEMENT OF THE CASE

Petitioner-Appellant Op Zee Verven ("O.Z.V.") is a Dutch company that manufactures and sells paint intended for exterior use on boats. ER-1. O.Z.V. has a contract with Yacht-Sea!, an English company, for the sale of this paint. ER-2. Yacht-Sea! uses it on vessels it manufactures and sells worldwide. ER-2. The contract contains a provision naming the London Court of International Arbitration, a private arbitral body, as the forum for resolving disputes arising from the contract. ER-2.

A Yacht-Sea! customer sued the company in late 2020 for losses sustained in repairing his yacht. ER-2. It had taken on water over several months while moored at the marina in California where the Respondents-Appellees Omar Ayad, Jennifer Jones, and Yi-Chin Cho work. ER-2. In mid-2021, a jury found for the customer and ordered Yacht-Sea! to pay damages. ER-2. Yacht-Sea! sought indemnification, claiming the damages were caused by paint failure. ER-2. In September 2021, Yacht-Sea! initiated private arbitral proceedings with O.Z.V. under their contract. ER-2.

On October 5, O.Z.V. filed an Application for an Order to Take Discovery in the U.S. District Court for the Central District of California. ER-1. It requested an order authorizing it to obtain testimony from the Respondents through depositions. ER-1. O.Z.V. claimed that its

request was under 28 U.S.C. § 1782 and that the London Court of Arbitration, a private arbitral body, is a "foreign or international tribunal." ER-3. The employees filed a Response on October 25, asserting that a private arbitral body does not qualify as a "foreign or international tribunal" under § 1782 and requesting that the district court reject O.Z.V.'s Application. ER-5, ER-6.

On December 6, the district court issued an Order denying O.Z.V.'s Application. ER-7. The court held that the London Court of Arbitration is not a "foreign or international tribunal" under § 1782 because it is a private commercial arbitral body. ER-8. Thus, the district court lacked the authority to grant O.Z.V.'s request. ER-8. O.Z.V. filed its Notice of Appeal on January 3, 2022. ER-9. This appeal is the subject of the proceedings before this Court. ER-9.

ARGUMENT

THE TERM "TRIBUNAL" IN 28 U.S.C. § 1782 DOES NOT ENCOMPASS PRIVATE ARBITRAL BODIES.

28 U.S.C. § 1782 allows district courts to compel individuals in its jurisdiction to provide testimony or other discovery for proceedings before a "foreign or international tribunal." 28 U.S.C. § 1782(a). Courts may provide this international judicial assistance upon receipt of a request or letter rogatory from that tribunal or a request from an interested person in the proceedings. *Id.*

The meaning of "foreign or international tribunal" in § 1782 is central to this case. The Petitioner incorrectly claims that the phrase includes private arbitration. ER-3. However, the plain language, legislative history, and policy implications show that the language only encompasses government-sanctioned bodies. This Court should hold that private arbitral bodies are not covered by § 1782 and affirm the district court's order denying O.Z.V.'s request for discovery in proceedings before the London Court of Arbitration.

Whether a private arbitral body is a "foreign or international tribunal" under § 1782 is a matter of statutory interpretation, which constitutes a question of law. *See In re Hill*, 811 F.2d 484, 485 (9th Cir. 1987). Questions of law are reviewed de novo on appeal. *Id.*

Other circuits have previously addressed this issue. The Fourth and Sixth Circuits have incorrectly held that § 1782 does extend to private arbitration. *Servotronics, Inc. v. Boeing Co.*, 954 F.3d 209, 216 (4th Cir. 2020); *In re Application to Obtain Discovery for Use in Foreign Proc.*, 939 F.3d 710, 714 (6th Cir. 2019). However, the Second, Fifth, and Seventh Circuits have correctly held that it does not. *Servotronics, Inc. v. Rolls-Royce PLC*, 975 F.3d 689, 696 (7th Cir. 2020); *In Re Guo*, 965 F.3d 96, 100 (2d Cir. 2020) (reaffirming *National Broadcasting Co., Inc. v. Bear Stearns & Co., Inc.*, 165 F.3d 184, 185 (2d Cir. 1999)); *Republic of Kazakhstan v. Biedermann Int'l*, 168 F.3d 880, 883 (5th Cir. 1999).[1]

This Court should align with the latter circuits and hold that § 1782 does not apply to private arbitration. The plain language and the legislative history illustrate that the statute only applies to government-sanctioned proceedings. This interpretation is further supported by the conflict a contrary interpretation would cause with the Federal Arbitration Act and the detrimental effects it would have on the core purposes of arbitration. For these reasons, the Court should hold that § 1782 excludes private arbitration and affirm the district court's denial of O.Z.V.'s request for discovery for proceedings before the London Court of Arbitration.

[1] The only Supreme Court decision involving § 1782 does not answer whether it applies to private arbitration. *See Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 246–47 (2004) (holding that an interested person can make a request under § 1782 for proceedings before the European Commission and that those proceedings need only be "in reasonable contemplation").

A. The plain language of 28 U.S.C. § 1782 does not include arbitration.

When resolving disputes over statutory interpretation, the Court must begin by examining the ordinary meaning of the text and the statute's structure. *United States v. King*, 24 F.4th 1226, 1231 (9th Cir. 2022). If this yields an unambiguous meaning, the Court must stop its analysis and disregard any additional arguments. *Id.* Section 1782(a) permits a "foreign or international tribunal" or interested person to request discovery for proceedings but does not specifically define "foreign or international tribunal." However, a review of the ordinary meaning of the language contemporaneous to its incorporation into the statute demonstrates that private arbitral bodies are not covered by § 1782. This is further supported by the statutory scheme, which indicates that assistance under § 1782 is only available in proceedings before a government entity.

1. The ordinary meaning of the phrase "foreign or international tribunal" does not include arbitral bodies.

When a statute does not define a term, the Court should determine its ordinary meaning by examining a dictionary definition contemporaneous to when the statute was enacted. *United States v. Carona*, 660 F.3d 360, 367 (9th Cir. 2011). When "foreign or international tribunal" was added to § 1782 in 1964,[2] *Black's Law Dictionary* defined "tribunal" as "[t]he seat of a judge; the place where he administers justice. The whole body of judges who compose a jurisdiction; a judicial court; the jurisdiction which the judges exercise." *Tribunal*, *Black's Law Dictionary* (4th ed. 1951). Notably, the definitions all include either "judge" or "court," which are inherently government-linked terms. Other dictionaries are even more explicit, stating that a tribunal "implies . . . power of decision of adjudicative effectiveness. Adjudication is a

[2] Act of October 3, 1964, Pub. L. No. 88-619, § 9, 78 Stat. 995, 997 (1964).

government function, the exercise of the sovereign power of the state." *Tribunal*, *Pope Legal Definitions* (1st ed. 1919). This reinforces that a tribunal was considered a government entity in 1964. Thus, the Court should interpret the language of § 1782 as excluding private entities.

However, the statute's wording is even more particular: it modifies "tribunal," specifying that it be "foreign" or "international." The doctrine of noscitur a sociis instructs that "a word is given more precise content by the neighboring words with which it is associated." *United States v. Williams,* 553 U.S. 285, 294 (2008). Dictionaries when § 1782 was amended defined "foreign" as "[b]elonging to another nation or country; belonging or attached to another jurisdiction." *Foreign*, *Black's Law Dictionary* (4th ed. 1951). The use of "belonging" and "attached" demonstrates the link between the state and the tribunal. Taken together, "foreign tribunal" refers to a court belonging to another country, not to a private entity. This is further supported by precedent, which shows that before the language change, the Supreme Court understood "foreign tribunal" to mean a foreign court. *See Canada Malting Co. v. Patterson S.S.*, 285 U.S. 413, 423 (1932) (stating that U.S. courts can decline jurisdiction if a foreign tribunal is a more suitable venue and that a Canadian court was more suitable in the instant case).

The second modification to "tribunal" is "international." The word's ordinary meaning is "participated in by two [or] more nations." *International*, *Webster's New International Dictionary of the English Language* (3d ed. 1961). This indicates that a tribunal that is "international" derives authority from an agreement between nations. This meaning of "international tribunal" is supported by contemporaneous discussions about international tribunals in Supreme Court concurrences. *See Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 178 n.4 (1951) (Douglas, J., concurring) (referring to the International Military Tribunal at Nuremberg as an international tribunal); *Hirota v. Gen. of the Army Douglas*

MacArthur, 338 U.S. 197, 204–05 (1949) (Douglas, J., concurring) (referring to the International Military Tribunal for the Far East as an international tribunal).

The Court has a "duty to respect not only what Congress wrote but, as importantly, what it didn't write." *Virginia Uranium, Inc. v. Warren*, 139 S. Ct. 1894, 1900 (2019). Noticeably absent from § 1782 are the modifiers "private" or "arbitral" before the word "tribunal." *See generally* § 1782. Nowhere in the plain text of the statute is there anything that can be construed to include arbitral bodies that are not government sanctioned. *Id.* The ordinary meaning of the text is unambiguous: a private arbitral body is not a "foreign or international tribunal" under § 1782.

2. The statutory context of 28 U.S.C. § 1782 reveals that a "foreign or international tribunal" is a government-sanctioned judicatory body and does not include private arbitration.

The greater statutory scheme further demonstrates that a "foreign or international tribunal" is a judicative body deriving its authority from one or more states. When an act contains the same phrase in multiple parts, the Court should construe it consistently throughout. *City of Los Angeles v. Barr*, 941 F.3d 931, 941 (9th Cir. 2019). The Act amending the language of § 1782 also adds 28 U.S.C. § 1696 and 28 U.S.C. § 1781 to the U.S. Code. §§ 4, 8–9, 78 Stat. at 995–97. Section 1696 uses the phrase "foreign or international tribunal" when discussing service of process in foreign and international proceedings. Section 1781 uses it repeatedly when outlining the rules for the transmission of letters of rogatory or requests between a tribunal in the U.S. and one abroad. Both use "foreign or international tribunal" when discussing actions that are inherently interactions between governments. *Rolls-Royce PLC*, 975 F.3d at 695. In this statutory context, the identical language in § 1782 should be understood to apply solely to government-sanctioned bodies and not extend to private arbitration. Since the meaning of the

phrase is unambiguous after a complete textual reading, the Court should end its analysis there and not pay further mind to extrinsic arguments. *See King*, 24 F.4th at 1231.

B. The legislative history illustrates that § 1782 was not intended to apply to private arbitral bodies.

The Court should only expand its analysis to include legislative history if the text of the statute is ambiguous, and the language of § 1782 clearly refers to government entities. *J.B. v. United States*, 916 F.3d 1161, 1167 (9th Cir. 2019). However, if the Court does expand its analysis beyond the text, it will discover that the legislative history further demonstrates that § 1782 excludes private arbitral bodies.

The purpose of the Act amending the language of § 1782 was "[t]o improve judicial procedures for serving documents, obtaining evidence, and providing documents in litigation with international aspects." § 1, 78 Stat. at 995. Notably, the purpose is to improve procedures *in litigation*, which is inherently court-linked. This indicates that Congress intended to provide international judicial assistance to government-sanctioned proceedings in a foreign or international forum, not private proceedings.

Before Congress amended the language of § 1782, the statute did not provide assistance to international tribunals. Hans Smit, *Assistance Rendered by the United States in Proceedings before International Tribunals*, 62 Colum. L. Rev. 1264, 1272 (1962). However, requests for assistance in treaty-based arbitral proceedings between the U.S. and Canada and from the United States-German Mixed Claims Commission in the 1930s revealed the need to expand U.S. judicial assistance beyond foreign courts. *Id.* at 1272–73. *See also* S. Rep. 88-1580, at 3784 (1964) (citing Smit with approval). Congress enacted 22 U.S.C. §§ 270–270g to allow U.S. courts to provide assistance to international tribunals. *See* 22 U.S.C. §§ 270–270g (1962), *repealed by* § 3, 78 Stat. at 995. However, U.S. assistance was still limited to international

tribunals to which the U.S. belonged and proceedings involving the U.S. or one of its citizens. *Id*. Congress found that "[t]his limitation [was] undesirable" and sought to expand assistance to all proceedings before such entities. S. Rep. 88-1580, at 3784–85.

In 1958, Congress established the Commission and Advisory Committee on International Rules of Judicial Procedure ("the Commission") to provide recommendations for improving U.S. assistance to "foreign courts and quasi-judicial agencies." Act of September 2, 1958, Pub. L. No. 85-906, §§ 1–2, 72 Stat. 1743, 1743 (1958). Congress adopted the Commission's proposals in full; this included replacing "in any judicial proceeding pending in any court in a foreign country" in § 1782 with "in a proceeding in a foreign or international tribunal." 28 U.S.C. § 1782(a) (1958), *amended by* § 9, 78 Stat. at 997; § 1782(a). This change was aimed at expanding the language of § 1782 to encompass the international tribunals previously covered by 22 U.S.C. §§ 270–270g and removing the limitations it had imposed. S. Rep. 88-1580, at 3785.

Congress intended for the new language to be more liberal than the previous phraseology, but not for it to be limitless. S. Rep. 88-1580, at 3785. Hans Smit, who helped draft the Commission's recommendations,[3] identified in 1962 that "an international tribunal owes both its existence and its powers to an international agreement [between states]." Smit, *supra*, at 1267. Further, the Committee included in its recommendation examples of applicable proceedings. S. Rep. 88-1580, at 3788. These included "proceedings . . . pending before investigating magistrates in foreign countries . . . administrative and quasi-judicial proceedings . . . [and proceedings] before a foreign administrative tribunal or quasi-judicial agency as in proceedings before a conventional foreign court." S. Rep. 88-1580, at 3788. Notably, these are all

[3] *In re Letter of Request from Crown Prosecution Serv. of United Kingdom*, 870 F.2d 686, 689 (D.C. Cir. 1989).

government-linked bodies. Private arbitration was not mentioned once. *See generally* S. Rep. 88-1580.

Nowhere in the Commission's Report or the Congressional Record is there a mention of private arbitral bodies. *See generally* 1105 Cong. Rec. 596–98, 22,857 (1964); S. Rep. 88-1580 at 3782–3794. This shows that Congress did not consider extending § 1782 to encompass such entities. If Congress had wanted to make such a large alteration to the purpose and applicability of § 1782 it would have discussed it. Since it did not, the evidence intimates that Congress did not intend for the amended § 1782 to cover private arbitration. *National Broadcasting Co., Inc.*, 165 F.3d at 189. Thus, the Court should hold that a "foreign or international tribunal" is a government-sanctioned body.

C. Enlarging the definition of "tribunal" under § 1782 to include private arbitral bodies would have undesirable policy implications.

The Court should apply the pure text meaning of a statute when the language is clear, as it is in this case. *J.B.*, 916 F.3d at 1167. However, if it must expand its analysis, it may consider public policy alongside legislative history. *Garcia v. PacifiCare of California, Inc.*, 750 F.3d 1113, 1116 (9th Cir. 2014). Doing so for § 1782 only provides further evidence that "foreign or international tribunal" should be interpreted to exclude private arbitration.

When interpreting the language of a statute, the Court should aim to avoid conflict with other federal statutes. *California ex. rel. Sacramento Metro. Air Quality Mgmt. Dist. v. United States*, 215 F.3d 1005, 1012 (9th Cir. 2000). This means that the Court should read § 1782 to exclude private arbitration. Doing otherwise would result in U.S. courts having a different policy for providing assistance to private arbitration abroad than they do for domestic private arbitration.

The Federal Arbitration Act is the mechanism for obtaining discovery for domestic private arbitration. *See* 9 U.S.C. § 7. The judiciary's role is more limited under 9 U.S.C. § 7 than under 28 U.S.C. § 1782. *See generally id.*; 28 U.S.C. § 1782. Section 7 permits *arbitrators* to issue a summons for documents or testimony for use in proceedings. 9 U.S.C. § 7. However, they can only petition a district court to compel such discovery if most of the arbitral panel sits within the court's jurisdiction. *Id.* Additionally, by explicitly giving such permissions to arbitrators, § 7 indicates that interested parties cannot make such requests. *National Broadcasting Co., Inc.*, 165 F.3d at 187. By contrast, 28 U.S.C. § 1782 allows both a tribunal and interested persons to request discovery without imposing limitations beyond the Federal Rule of Civil Procedure. Consequently, if the Court interprets § 1782 to include private arbitral bodies, parties to foreign arbitration will be able to request what parties to domestic arbitration cannot. *See* 9 U.S.C. § 7; 28 U.S.C. § 1782. It is illogical to think that Congress intended for foreign arbitral bodies to have more access to U.S. judicial assistance than domestic ones. To maintain consistent discovery policies for private arbitration at home and abroad, the Court must interpret "foreign or international tribunal" under § 1782 as excluding private arbitral bodies.

Extending § 1782 to include private arbitration would also undermine the incentives for choosing to arbitrate rather than litigate. Parties include arbitration provisions in their contracts to make the dispute resolution process more efficient and cost-effective than litigation. Writing arbitration into a contract allows parties to decide in advance on the forum and procedures they will use. *Biedermann Int'l*, 168 F.3d at 883. However, if "parties succumb to fighting over burdensome discovery requests far from the place of arbitration . . . [it will] thwart[] private international arbitration's greatest benefits." *Id.* Extending § 1782 would cause discovery requests for private arbitration to become unduly burdensome on parties and the courts that

consider them. To avoid such problems, the Court must read "foreign or international tribunal" in § 1782 to apply only to state-sanctioned bodies.

CONCLUSION

The Court should hold that "foreign or international tribunal" under 28 U.S.C. § 1782 does not cover private arbitration. In the present case, this means that the London Court of Arbitration is not covered by § 1782. Thus, the Respondents respectfully request that the Court affirm the Order denying O.Z.V.'s request for discovery.

Date: March 21, 2022

Respectfully submitted,

By /s/ Tatiana Varanko

Attorney for Respondents-Appellees
Omar Ayad, Jennifer Jones, and
Yi-Chin Cho

Applicant Details

First Name	**Matthew**
Last Name	**Veldman**
Citizenship Status	**U. S. Citizen**
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Contact Phone Number	**708-601-2734**

Applicant Education

BA/BS From	**University of Chicago**
Date of BA/BS	**June 2016**
JD/LLB From	**University of California, Berkeley School of Law** **https://www.law.berkeley.edu/careers/**
Date of JD/LLB	**May 10, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**California Law Review**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

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This applicant has certified that all data entered in this profile and any application documents are true and correct.

June 11, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I am a rising 3L at Berkeley Law writing to apply to clerk in your chambers for the 2024 term, or any term thereafter. I am particularly interested in pursuing a clerkship in a federal district court. I want to practice in plaintiffs-side complex litigation or government antitrust enforcement, which are primarily litigated in federal court. My 1L judicial externship also helped me appreciate how much a district court clerkship would provide invaluable experiences to prepare for a career in litigation.

I believe I would bring enthusiasm and dedication to the tasks of a clerkship. I genuinely enjoy the process of legal research and writing and take seriously the notion that they are skills that can always be improved. I've sought out opportunities to practice those skills, including taking writing-heavy seminars and seeking out pro bono projects where I could research and write. The culmination of this practice has been my work on my student note. My appreciation for the craft involved in both research and writing has grown through the work of marshaling hundreds of pages of diverse source material and maintaining the coherence and flow of my argument through a sixty-plus page article. I want to clerk to continue to hone my craft in these skills.

Another experience that has improved my writing and thinking is my teaching assistant role for an undergraduate antitrust law class. As undergraduates, my students were generally beginners to both antitrust and law. I often had to strain to parse the meaning from their arguments, which could contain errors of antitrust law and common shortcomings of undergraduate writing. Then I had to assess how their writing compared to their peers and give feedback on it. Doing so much repeated reading and evaluating has made me a better editor and sharpened my eye to just how much clarity, good structure, and reader-oriented writing matter. I also taught discussion sections for the course. I could tell when a concept was not sticking, and I often had to think of how to rephrase an idea in a new way to help illustrate it. Teaching helped me think hard about communication and presentation, and I improved at explaining and justifying the reasoning behind a concept, and at trying to use clear and precise language in doing so.

I am very interested in clerking in your chambers and would be eager to accept an interview to discuss my interest in the position. Thank you for your consideration.

Sincerely,

Matt Veldman

Matt Veldman
461 65th St. | Oakland, CA 94609 | mveldman@berkeley.edu | (708) 601-2734

EDUCATION

University of California, Berkeley, School of Law, J.D. Candidate, May 2024
Activities: Associate Editor, *California Law Review*; Consumer Advocacy and Protection Society; Plaintiffs' Law Association (events committee); consumer law pro bono projects
Honors: 2L Academic Distinction (Top 25%)
Publications: *A Rule Change is, After All, a Rule Change: Rule 23 Settlement Approval and the Problems of Consensus Rulemaking*, 112 Calif. L. Rev. (forthcoming, February 2024)

University of California, Los Angeles, School of Law, First-year Legal Studies, 2021-2022
Activities: Skye Donald Moot Court; Central California Legal Services (Pro Bono)
Honors: Academic Distinction (Top 10%); Silver Award (2nd highest grade) Constitutional Law

The University of Chicago, B.A., Economics, English Language & Literature, June 2016
Activities: Varsity Swimming, Intramural Innertube Water Polo, Community Swim Lessons

EXPERIENCE

Kessler, Topaz, Meltzer, & Check, LLP Philadelphia, PA
Summer Associate May – Aug. 2023
- Wrote legal and fact memos for securities fraud and consumer cases at plaintiffs class action firm

University of California, Berkeley - Professor Aaron Edlin Berkeley, CA
Graduate Student Instructor (GSI), Antitrust Economics & Law Jan. – May 2023
- Taught 72 students in three weekly 1-hour discussion sections to review and apply class concepts
- Held office hours, graded assignments and exams, coordinated with professor and co-GSI

Judge Alex Tse, U.S. District Court for the Northern District of California San Francisco, CA
Judicial Extern May – July 2022
- Researched legal issues for pending motions; presented findings orally and in written memoranda
- Observed hearings, trials, status and settlement conferences, chambers case discussions

University of California, Berkeley, School of Law Berkeley, CA
Faculty Assistant Aug. 2019 – July 2021
- Managed administrative tasks for 8-10 professors, including proofreading and Bluebooking
- Coordinated transportation, lunch, and lodging for weekly speaker workshops, among other tasks

Nieman Inc Chicago, IL
Assistant Editor May 2018 – Feb. 2019
- Wrote and edited lessons for textbooks for grades 9-12 and for English language learners

Logic Prep; Academic Approach; ArborBridge tutoring companies Chicago, IL
Academic & Test Prep Tutor July 2017 – Nov. 2021
- Provided classroom, small group, and 1-on-1 ACT/SAT tutoring to students

Revival Theater Chicago, IL
Bartender June 2016 – July 2017
- Mixed drinks, directed guests, opened and closed theater

INTERESTS

Learning Spanish; cooking for friends; taking pottery classes; playing tennis

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UCLA ID: 305431922
BIRTHDATE: 03/08/XXXX

UNIVERSITY OF CALIFORNIA, LOS ANGELES
LAW ACADEMIC TRANSCRIPT

PROGRAM OF STUDY
ADMIT DATE: 08/23/2021
SCHOOL OF LAW
MAJOR: LAW

DEGREES | CERTIFICATES AWARDED
NONE AWARDED

PREVIOUS DEGREES
NONE REPORTED

CALIFORNIA RESIDENCE STATUS: RESIDENT

FALL SEMESTER 2021
MAJOR: LAW

CONTRACTS	LAW 100		4.0	16.0	A
INTRO LEGL ANALYSIS	LAW 101		1.0	0.0	P
LAWYERING SKILLS	LAW 108A		2.0	0.0	IP
MULTIPLE TERM - IN PROGRESS					
PROPERTY	LAW 130		4.0	16.0	A
CIVIL PROCEDURE	LAW 145		4.0	16.0	A
		ATM	PSD	PTS	GPA
	TERM TOTAL	13.0	13.0	48.0	4.000

SPRING SEMESTER 2022

LGL RSRCH & WRITING	LAW 108B		5.0	18.5	A-
END OF MULTIPLE TERM COURSE					
CRIMINAL LAW	LAW 120		4.0	13.2	B+
TORTS	LAW 140		4.0	16.0	A
CONSTITUT LAW I	LAW 148		4.0	17.2	A+
PERSUASION	LAW 165		1.0	0.0	P
		ATM	PSD	PTS	GPA
	TERM TOTAL	18.0	18.0	64.9	3.818

LAW TOTALS

	ATM	PSD	PTS	GPA
PASS/UNSATISFACTORY TOTAL	2.0	2.0	N/A	N/A
GRADED TOTAL	29.0	29.0	N/A	N/A
CUMULATIVE TOTAL	31.0	31.0	112.9	3.893

TOTAL COMPLETED UNITS 31.0

MEMORANDUM
MASIN FAMILY ACADEMIC SILVER AWARD
CONSTITUT LAW I, S. 1/2, 22S
WITHDREW 07/18/2022

END OF RECORD
NO ENTRIES BELOW THIS LINE

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UCLA SCHOOL OF LAW TRANSCRIPT LEGEND

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The following information is offered to assist in the evaluation of this student's academic record.

COURSE NUMBERS: (as of 2010) First year and MLS courses are numbered 100-199, advanced courses 200-499, seminars 500-699, experiential courses 700-799, externships 800-899, short courses 900-999. (1978-2010) First year courses are numbered 100-199, advanced courses 200-399, clinical courses 400-449, externships 450 – 499, and seminars 500 – 599.

CREDITS: Beginning 1978, credits are semester units, prior to that time, credits were quarter units.

EXPLANATION OF CODES FOUND TO THE RIGHT OF A COURSE ON OLDER TRANSCRIPTS

CODE	EXPLANATION
PU	Courses graded on a pass/Unsatisfactory/ No Credit basis
T1	First term of a multiple term course
2T	Final term of a multiple term course, unit total for all terms combined
TU	Final term of a multiple course graded on a Pass/Unsatisfactory/No Credit basis
UT	Final term of a multiple course graded on a Pass/Unsatisfactory/No Credit basis, unit total for all terms combined.

GRADE POINT AVERAGE (GPA) CALCULATION: The GPA is calculated by dividing grade points by graded units attempted. Transfer credits are not included in the UCLA GPA.

RANK: Until 1970, the School of Law ranked its graduates according to their final, cumulative grade point averages. Since that time, it has been the policy of the School of Law not to rank its student body. The only exceptions are:

- 1971 – 2015 - at the end of each academic year the top 10 students in the second- and third-year classes were ranked.
- 2016 – Present - at the end of each academic year the top 12 students in each class are ranked.
- 2009 – Present - the top ten percent of each LLM graduating class are ranked (by percentile, rather than numerically).
- The top ten percent of each JD graduating class is invited to join the Order of the Coif (a National Honorary Scholastic Society.)

HONORS:
2008 - Present - Masin Scholars – top 12 students at the end of the first year, prior to optional grade changes.
2013 – Present - Masin Gold Award (formerly Dean's Awards) – highest grade in each course graded on a curve. Masin Silver Award (formerly Runner-up Dean's Award) - second highest grade in each large course (40 or more students) graded on a curve.

ACCREDITATION: American Bar Association, 1952

CERTIFICATION: The Seal of the University of California, Los Angeles, Registrar's Office and the Registrar's signature.

FERPA NOTICE: This educational record is subject to the Federal Family Educational Rights and Privacy Act (FERPA) of 1974, and subsequent amendments. This educational record is furnished for official use only and may not be released to, or accessed by, outside agencies or third parties without the written consent of the student identified by this record.

EXPLANATION OF GRADING SYSTEM
1995 – Present

Grade & Grade Points	JD, LLM and SJD Student Definitions	MLS Student Definitions
A+ = 4.3	Extraordinary performance	Extraordinary performance
A = 4.0 A- = 3.7	Excellent performance	Superior Achievement
B+ = 3.3 B = 3.0 B- = 2.7	Good performance	Satisfactorily demonstrated potentiality for professional achievement in field of study
C+ = 2.3 C = 2.0 C- = 1.7	Satisfactory performance	Passed the course but did not do work indicative of potentiality for professional achievement in field of study
D+ = 1.3 D = 1.0	Unsatisfactory performance	Grade unavailable for MLS students
F	Lack of understanding of major aspects of the course No credit awarded	Fail
P	Pass (equivalent of C- and above) Not calculated into the GPA	Satisfactory (achievement at grade B level or better)
U	Unsatisfactory (equivalent to grades D+ and D)	Grade unavailable for MLS students
NC	No credit (equivalent to a grade of F) No unit credit awarded	No credit (equivalent to a grade of F) No unit credit awarded
LI	Incomplete, course work still in progress	Grade unavailable for MLS students
I	Grade unavailable for JD, LLM and SJD students	Incomplete, course work still in progress
IP	In Progress, multiple term course, grade given upon completion	In Progress, multiple term course, grade given upon completion
W	Withdrew from course	Withdrew from course
DR	Deferred Report	Deferred Report

Previous Grading Scales

GRADE	DEFINITION
100-85	A or excellent performance (grades of 95 and above demonstrate extraordinary performance)
84-75	B or good performance
74-65	C or satisfactory performance
64-55	D or unsatisfactory performance
54-50	F or lack of understanding of major aspects of the course No unit credit awarded
P	Pass (Equivalent to grades of 65 and above) Not calculated in the GPA
U = 62	Unsatisfactory (Equivalent to grades of 64-55)
NC = 50	No Credit (Equivalent to grades of 54-50) No unit credit awarded
IP	In Progress, multiple term course, grade given upon completion
W	Withdrew from course

GRADE	DEFINITION
H (high)	A or excellent performance
HP (high pass)	B or good performance
P (pass)	C or satisfactory performance
I (inadequate)	D or unsatisfactory performance
NC (no credit)	F or lack of understanding of major aspects of the course. No unit credit awarded
CR (credit)	Pass, unit credit awarded for the course
NR (in progress)	In progress, multiple term course, grade given upon completion
W	Withdrew from course

Berkeley Law
University of California
Office of the Registrar

Matthew J Veldman
Student ID: 3035453192
Admit Term: 2022 Fall

Printed: 2023-06-10 16:29

Academic Program History
Major: Law (JD)

2022 Fall

Course		Description	Units	Law Units	Grade
LAW	210	Legal Profession	2.0	2.0	P
		Fulfills Professional Responsibility Requirement			
		John Steele			
LAW	222	Federal Courts	5.0	5.0	HH
		Amanda Tyler			
LAW	242.9	Listening and Communicating	1.0	1.0	CR
		Units Count Toward Experiential Requirement			
		Mohit Gourisaria			
LAW	244.61	Multidistrict Litigation	1.0	1.0	CR
		Andrew Bradt			
		Elizabeth Cabraser			
LAW	248.8	Evol of Antitr, Mrgr Rvw & Enf	1.0	1.0	CR
		Kelly Fayne			
LAW	252.2	Antitrust Law	4.0	4.0	HH
		Prasad Krishnamurthy			

Transfer Credits	Units	Law Units
UC Los Angeles School of Law	28.0	28.0
Fulfills Constitutional Law Requirement		
UC Los Angeles School of Law.	3.0	3.0
Units Count Toward Experiential Requirement		

	Units	Law Units
Term Totals	45.0	45.0
Cumulative Totals	45.0	45.0

2023 Spring

Course		Description	Units	Law Units	Grade
ECON	375	GSI PEDAGOGY WKSHP	2.0	0.0	S
		James Campbell			
LAW	241	Evidence	4.0	4.0	P
		Sean Farhang			
LAW	247.1	Reg of Capital Mkts & Fin Inst	2.0	2.0	P
		Mark Perlow			
LAW	251.5	Corporate Finance	4.0	4.0	CR
		Prasad Krishnamurthy			
LAW	252.3	International Antitrust Law	2.0	2.0	HH
		Joel Sanders			
		Rachel Brass			

	Units	Law Units
Term Totals	14.0	12.0
Cumulative Totals	59.0	57.0

2023 Fall

Course		Description	Units	Law Units	Grade
LAW	207.5	J.D. Advanced Legal Writing	3.0	3.0	
		Fulfills Writing Requirement Opt 1 or Experiential			
		Lindsay Saffouri			
LAW	227.8	Supreme Court Sem	3.0	3.0	
		Fulfills 1 of 2 Writing Requirements			
		Amanda Tyler			
LAW	233	White Collar Crime	2.0	2.0	
		Units Count Toward Experiential Requirement			
		Amy Craig			
LAW	244.1	Adv Civ Pro:Complex Civil Lit	4.0	4.0	
		Andrew Bradt			
LAW	244.13	Suing Corporations	2.0	2.0	
LAW	285.33	How to Thnk and Wrt Lk a Judge	1.0	1.0	

	Units	Law Units
Term Totals	0.0	0.0
Cumulative Totals	59.0	57.0

Carol Rachwald, Registrar

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University of California
Berkeley Law
270 Simon Hall
Berkeley, CA 94720-7220
510-642-2278

KEY TO GRADES

1. Grades for Academic Years 1970 to present:

HH	–	High Honors	CR	–	Credit
H	–	Honors	NP	–	Not Pass
P	–	Pass	I	–	Incomplete
PC	–	Pass Conditional or Substandard Pass (1997-98 to present)	IP	–	In Progress
NC	–	No Credit	NR	–	No Record

2. Grading Curves for J.D. and Jurisprudence and Social Policy PH.D. students:

In each first-year section, the top 40% of students are awarded honors grades as follows: 10% of the class members are awarded High Honors (HH) grades and 30% are awarded Honors (H) grades. The remaining class members are given the grades Pass (P), Pass Conditional or Substandard Pass (PC) or No Credit (NC) in any proportion. In first-year small sections, grades are given on the same basis with the exception that one more or one less honors grade may be given.

In each second- and third-year course, either (1) the top 40% to 45% of the students are awarded Honors (H) grades, of which a number equal to 10% to 15% of the class are awarded High Honors (HH) grades or (2) the top 40% of the class members, plus or minus two students, are awarded Honors (H) grades, of which a number equal to 10% of the class, plus or minus two students, are awarded High Honors (HH) grades. The remaining class members are given the grades of P, PC or NC, in any proportion. In seminars of 24 or fewer students where there is one 30 page (or more) required paper, an instructor may, if student performance warrants, award 4-7 more HH or H grades, depending on the size of the seminar, than would be permitted under the above rules.

3. Grading Curves for LL.M. and J.S.D. students for 2011-12 to present:

For classes and seminars with 11 or more LL.M. and J.S.D. students, a mandatory curve applies to the LL.M. and J.S.D. students, where the grades awarded are 20% HH and 30% H with the remaining students receiving P, PC, or NC grades. In classes and seminars with 10 or fewer LL.M. and J.S.D. students, the above curve is recommended.

Berkeley Law does not compute grade point averages (GPAs) for our transcripts.

For employers, more information on our grading system is provided at: https://www.law.berkeley.edu/careers/for-employers/grading-policy/

Transcript questions should be referred to the Registrar.

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May 15, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Re: Matthew Veldman, Berkeley Law 2024 – Clerkship Recommendation

Dear Judge Sanchez:

I write to recommend my student, Matthew Veldman, for a clerkship in your chambers. Matt is 2L set to graduate in 2024. This past semester I taught Matt in my Federal Courts class, where he earned a mark of High Honors (the highest possible mark) and was a regular and welcome participant in class discussions. But well before he was my student, I knew Matt as my faculty assistant, a role in which he excelled and which exposed him to the law school environment, ultimately convincing him to pursue his law studies. Matt was a favorite and stand-out student in my class and a regular participant in class discussions who made exceptional contributions. He is a joy to know and with whom to work. His performance in the course and on the final exam, moreover, was enormously impressive and revealed that Matt is a gifted and serious student of the law. For these reasons, I recommend that you give his application close consideration, as I expect he will be a superb law clerk.

Matt came to Berkeley Law after studying Economics, English Language & Literature at the University of Chicago. In college, Matt was also a varsity swimmer. He then worked as a bartender, theater manager, tutor, and editor. To cap off these experiences, Matt came to Berkeley Law to work as a faculty assistant in 2019 for two years, including the exceedingly difficult period during which we navigated the COVID-19 pandemic. It was then that I came to know Matt and work with him, as he served as my faculty assistant during that period. Working with Matt was a joy. He was driven, hard-working, and had impeccable judgment. He proofed books and articles for me (his outstanding editing skills here being a major asset) and helped me run a workshop with visiting faculty. I came to delegate more and more responsibilities to him, confident that he would both do an outstanding job and navigate any difficulties or gray areas that arose in just the right way, with no need for me to look over his shoulder. In this respect, he made my life easier, and I confess to regretting very much losing him when he left. But I, and others, encouraged Matt to go to law school, and so I really cannot complain that he followed my advice. Matt thereafter began his studies at UCLA Law, where he excelled, earning an A+, four As, an A-, and a B+ in graded courses, before transferring to Berkeley Law this past summer. (These marks put Matt in the top 10% of his 1L class at UCLA, and I should note that not only did he receive an A+ in Constitutional Law, he won the award for second-highest grade in the class.) When I saw his name enrolled in my Federal Court class, I was thrilled.

I had the privilege of teaching Matt in my Federal Courts class this past fall semester. Although he was surrounded by a large number of the very top ranked second- and third-year students at Berkeley, Matt was a standout in class. His in-class performance was enormously impressive and every single day he brought an enthusiasm and energy to the class that was nothing short of infectious. Despite having a very full plate of activities and other commitments, Matt stood out as always prepared and eager to engage in our class discussions and debates. Matt was also a regular at office hours. Between his visits and in-class performance, one thing that also stood out about Matt was his robust and broad intellectual curiosity. In this respect, my interactions with him very much confirmed my intuition years earlier that law school was the right path for Matt.

At the end of the semester, Matt translated his impressive in-class performance into an exceptional examination, earning one of the handful of coveted marks of High Honors in the class on his exam (which I graded blindly). This put Matt in the top 10% of the class of 69 exceptionally-talented students. Indeed, Federal Courts tends to draw the top students in the law school and my version of the course is five units, demanding far more work than the other offerings of Federal Courts at Berkeley Law.

I should note that Matt's exam underscored his talents both in terms of mastering the doctrine—both settled and unsettled—and that he can move quickly through complicated issues while writing clear, efficient analyses. The exam on this score was no picnic, comprised as it was of multiple essay questions given under time pressure with word limits applicable to submitted answers. Matt's exam stood out for its excellence. He delved deeply into each and every nuance of the questions asked and revealed a mastery of the range of incredibly challenging Federal Courts topics covered, including standing, federalism, habeas corpus jurisprudence, sovereign immunity, and jurisdiction-stripping. All told, his performance in the course both in class and on the exam was first-rate and put him in a category of the very top students in the class, all the while that he has all the talents and work ethic to be an outstanding law clerk. My confidence in this conclusion is bolstered all the more by the fact that I have worked with Matt in a supervisory role and can attest to his superb performance and judgment then.

Outside of the classroom, Matt has been involved in a host of activities. He has been a teaching assistant to one of my colleagues in Antitrust and Economics, an extern to a federal district judge, been active in the Consumer Advocacy and Protection Society and Plaintiffs' Law Association; and worked on numerous consumer law pro bono projects, Matt is also now an editor on the California Law Review, having written onto the journal with an outstanding note on class actions that will publish next winter. More specifically, the note examines the 2018 amendments to FRCP Rule 23. Matt tells me he was interested in what drove the 2018 amendments to be adopted and how the changes have affected class action practice since then. He examines how some courts have implemented the new settlement approval criteria and offers a number of critiques of how things have played out as well as the rulemaking process itself. The piece is original and will make a significant contribution. It shows his intellectual gifts while also underscoring his intellectual curiosity. Further, his work on the law review and this note underscore that Matt has and will continue to refine his already outstanding writing and editing skills.

Amanda Tyler - atyler@berkeley.edu

Matt tells me that he hopes to dive into complex litigation (perhaps specifically in the area of antitrust law) on the plaintiff side and serve in government positions long-term and do appellate work following graduation, with a long-term goal of engaging in government service and potentially teaching himself one day. He is smart, driven, and a joy with whom to work. Putting all of this together, his talents suggest that he will be an asset to any chambers fortunate enough to hire him. If there is anything else that I may tell you about Matt as you consider his application, please do not hesitate to be in touch.

My very best regards,

Amanda L. Tyler
Law Clerk to the Honorable Guido Calabresi, 1998-99, and the Honorable Ruth Bader Ginsburg, 1999-2000

June 7, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I am confident that Matt Veldman will make an outstanding judicial law clerk. Matt received the Prosser Award for earning the second-highest score out of sixty in my antitrust course in the fall semester of 2022. This is an extremely demanding course. We cover the historical canon of antitrust cases and doctrine, current areas of active litigation, and the economics underlying competition law and policy. We also cover the analysis of complex economic and statistical evidence that is characteristic of antitrust litigation in federal district courts. Students analyze in and out-of-class problems covering agreements between competitors, mergers between competitors, and monopolization. As a result of these requirements, the class attracts a particularly focused and dedicated group of students at Berkeley Law.

Matt's exam was thoughtful, well organized, and analytically precise. It demonstrated an ability to understand and manipulate legal doctrine using prior case law, to creatively apply economic principles to construct and assess legal arguments, and to weigh the probative value of evidence in complex fact patterns. Matt was also a valuable contributor to our class discussions. He frequently asked probing questions and was able to identify subtle distinctions in legal doctrines and factual patterns.

Matt demonstrated an eagerness and aptitude for applying antitrust analysis to current cases and areas of controversy. He made use of office hours to solidify and advance his understanding of the material. In office hours, I found him to be well prepared and intellectually curious. Matt's questions and reasoning showed that he had carefully thought through each topic beforehand. Matt's performance in this course convinces me that he has the requisite intellectual tools and temperament to be an excellent clerk at both the district and appellate court level. I have written many clerkship letters for students who finished among the top two of my antitrust class and they have gone on to be successful federal clerks.

Matt was also a student in my Corporate Finance class in the spring semester of 2023. This course is modeled on the Stanford Business School's Corporate Finance course and uses the same textbook and materials. Because the material is unfamiliar to many law school students, it is graded pass/fail. Matt displayed a very thorough knowledge of the material in his homework and final exam. Matt's performance in the course convinces me that he can readily digest complex business material and that he will be a quick study when it comes to understanding expert testimony and submissions.

In his time at UCLA and Berkeley Law, Matt has compiled an exemplary academic record and participated actively in student life. He gained valuable practice experience as a judicial extern for Judge Alex Tse of the U.S. District Court for the Northern District of California, as a summer associate for Kessler, Topaz, Meltzer, and Check, a plaintiff-side class action firm in Philadelphia, PA, and as a student advocate for the Consumer Advocacy and Protection Society at Berkeley Law.

In his classroom and personal demeanor, Matt comes across as diligent, respectful, sincere, and very personable. His professional work experience is further evidence that he can work and communicate effectively in a variety of contexts. I am sure that he will be a wonderful colleague to those who have the pleasure to work with him.

Please do not hesitate to contact me if you any questions or would like to further discuss Matt's application.

Sincerely,

Prasad Krishnamurthy
Professor of Law

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May 25, 2023

Your Honor:

I write this letter in support of Matthew Veldman's application to clerk in your chambers. Matt is a wonderful student. He is whip-smart, deeply engaged in his studies, and truly committed to the law. Matt is also a decent, kind person. I give him my highest recommendation.

Then a UCLA student, Matt was one of eighty-eight students in the Civil Procedure class I taught during the Fall 2021 semester. Although the class was large, I got to know a lot of the students quite well. We had all spent the previous year isolated in our homes, so the thrill of assembling in person created real electricity in the class. I felt an unusually strong bond with my students, and I hope they felt the same. At any rate, whatever the reason, I got to know Matt pretty well and feel confident in my judgment of him.

Matt excelled in my class. He participated all the time, although he always did so appropriately and with good sense. Matt was not a gunner in the slightest. Rather, he had a knack for weighing in when class discussion was flagging. His particular skill involved asking questions that both clarified the matter under discussion for his classmates and elevated the discussion's rigor. Each time Matt raised his hand, I knew that I needed to clarify what I had been teaching. But I also knew that I'd be pushing my students further than what I had planned to do.

What added to the appeal of Matt's interventions was the humility with which he made them. Matt must know that he has a particularly special intellect. But he always weighed in gently, with considerable regard for his classmates' views. He routinely couched his questions or comments as inspired by what his classmates said or as an extension of their points. Often they weren't at all. But Matt has a lot of emotional intelligence, and he clearly could sense how he could deploy his powerful mind in the most supportive, collegial way possible.

Matt clearly found his studies deeply engaging. He made multiple appointments to talk to me after class about various procedural matters, including an interest in pursuing plaintiffs-side class action work and his experience helping to represent consumer debtors as a paralegal before law school. Debt collection litigation and its prominence on state court dockets are topics of major importance to those of us interested in civil justice and its reform. Matt and I had several very enriching discussions about these matters, and he constantly impressed me with his knowledge, judgment, and passion.

Matt's obvious work ethic and his intellectual engagement with Civil Procedure paid off. He earned an A on my exam and thus for the course. UCLA has a terrific student body and a rigid 1L curve. To come out on top, as Matt did, truly means something. He is one of the top law students in the country, I believe.

Matt's decision to transfer to UC Berkeley was a blow to UCLA, although totally understandable in light of his personal circumstances. (Matt's partner is pursuing graduate studies at UC Berkeley.) Although selfishly I wish Matt had not had the option to move north, UC Berkeley obviously made the right decision in admitting him as a transfer student. He has clearly flourished there, as evidenced by his membership on the *California Law Review* and his terrific note (see more below).

I did not have a chance to supervise Matt's writing, but I have read a couple of exemplars and can attest to its strength. Matt wrote a terrific brief as his final assignment for his 1L legal research and writing class. He writes clearly, using concise, punchy sentences to make easy-to-follow arguments. The writing has a clear structure, although it does not have the sort of rigid feel that 1L legal writing committed to IRAC tends to have. He has a mature, polished tone. Matt is already writing at the level of a sophisticated junior associate in a top law firm.

Perhaps even more impressive is the note Matt wrote for the *California Law Review*, which I understand will publish it. Matt's note tells the story of the 2018 amendments to Rule 23 of the Federal Rules of Civil Procedure that purport to regulate the approval of class action settlements. These amendments represented the culmination of a lengthy effort that started with the ambition to recreate class action practice fairly significantly. Initially a wide range of possibilities were on the table, much to the consternation of plaintiffs' and defense lawyers alike. But a desire for consensus proved the most powerful determinant of the Civil Rules Committee's choices, and in the end the committee proposed a set of changes that either made minor technocratic improvements to class action practice or codified little more than an instruction to district courts to exercise their discretion wisely.

By Matt's convincing account, the settlement approval amendments illustrate the latter type of consensus-driven rulemaking. The committee declined to take a position on the purposes served by the class action and instead crafted a "guide" to settlement approval that did little more than attempt to have district judges exercise their consensus wisely. Matt recounts the ins-and-outs of this history in masterful detail, drawing upon a truly impressive foray into records of the committee's efforts. He situates the final product in theoretical perspective, drawing impressively on Robert Bone's work on rule design choices. But Matt then closes with a twist. Notwithstanding the amendment's lack of clear normative thrust, Matt finds in Rule 23's settlement approval guidance a subtle choice to favor, however modestly, a particular conception of the class action. He documents how the rule, as amended, seems to serve an understanding of class litigation as primarily compensatory and not regulatory.

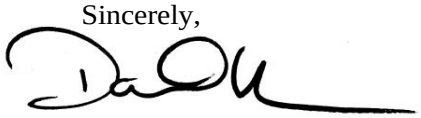
Matt's note is student writing at its best. He traverses doctrinal, historical, and theoretical ground with ease and demonstrates a truly precocious understanding of all of the deep normativity embedded in procedure. To my mind, his note compares favorably to many job-talk papers I have read by entry-level law professor candidates. It also illustrates Matt's capacity to execute a large-scale research project, which is surely relevant to what he would encounter in our chambers.

Matt loves the law and would be a pleasure to have in chambers. Our conversations about debt collection litigation and consumer protection class actions have been among the most interesting I've

had with law students. I could readily envision co-authoring an article with Matt, not just because he is so good at legal scholarship but also because he would be a true pleasure to work with. I also think students like Matt are the sorts who keep the law school experience positive for everyone. He is congenial, good humored, and simply very, very interesting.

You would be lucky to have Matt as your clerk.

Sincerely,



David Marcus